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SUPREME COURT OF THE UNITED STATES.

No. ~~286~~ 134.47.

THE ATTORNEY GENERAL OF THE COMMONWEALTH OF MASSACHUSETTS, EX. REL. THE ASSOCIATE REFORMED PRESBYTERIAN SYNOD OF NEW YORK AND AL., PL'FF IN ERROR,

vs.

THE PROPRIETORS OF THE MEETING-HOUSE IN FEDERAL STREET, IN THE TOWN OF BOSTON.

IN ERROR TO THE SUPREME COURT OF THE STATE OF MASSACHUSETTS, AT BOSTON.

GEO. S. GIDEON, Printer, 511 Ninth street, near Penn. Avenue.

No Jurisdiction.
Counsel for Mass Cases.

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To the Honorable Nathan Clifford, Associate Justice of the Supreme Court of the United States:

The petition of the undersigned, attorney general of the Commonwealth of Massachusetts, at the relation of the Associate Reformed Presbyterian Synod of New York, the First Associate Reformed Presbyterian Church and Society of Boston, the Reverend Alexander Blaikie, pastor of the said church and society, Edward M. Stuart, John Taylor, William Elder, and Samuel Gwynn, ruling elders of the said church and society, and the Prudential Committee for managing the temporal affairs of the said society, for and in behalf of themselves and the rest of the members of said church and society, and John W. Emery, all of Boston, in said Commonwealth, respectfully showeth: That in a suit, or information or complaint in equity in the supreme court of said Commonwealth, commenced at the March term thereof for the county of Suffolk, A. D. 1851, in which the petitioners are plaintiff, and the Proprietors of the Meeting-house in Federal street, in the town of Boston, in said Commonwealth, were defendants, a final judgment or decree was rendered at the March term of said court, A. D. 1855, to wit, on the 6th day of said March, A. D. 1855, dismissing the bill of complaint in said suit with costs.

That in said judgment or decree there is manifest error to the prejudice of the petitioner, in this—that there was drawn in question in said suit the validity of a statute of said Commonwealth, to wit, an act of the legislature thereof, passed the 15th day of June, 1806, entitled "An act declaring and confirming the incorporation of the Proprietors of the Meeting-house in Federal street, in the town of Boston," being repugnant to the Constitution of the United States; and the decision of the court was in favor of the validity of said statute.

Wherefore the petitioner prays your honor to issue a writ of error in the said case, returnable to the proper term of the Supreme Court of the United States, to the end that full and speedy justice may be done in the premises.

STEPHEN H. PHILLIPS,
*Attorney General of the Commonwealth of Massachusetts.*

*Citation.*

UNITED STATES OF AMERICA,
*Massachusetts District, ss.*

To "The Proprietors of the Meeting-house in Federal street, in the town of Boston," in the Commonwealth of Massachusetts, in said district, greeting:

You are hereby cited and admonished to be and appear before

the Chief Justice and associate justices of the Supreme Court of the United States on the first Monday of December next, (A. D. 1859,) at Washington, the present seat of the national government, then and there to answer to a writ of error this day sued out of the clerk's office of the circuit court of the United States for the first circuit and district aforesaid, wherein the attorney general of the Commonwealth of Massachusetts, at the relation of the Associate Reformed Presbyterian Synod of New York, the First Associate Reformed Presbyterian Church and Society of Boston, the Reverend Alexander Blaikie, pastor of said church and society, Edward M. Stuart, John Taylor, William Elder, and Samuel Gwynn, ruling elders of the said church and society, and the Prudential Committee for managing the temporal affairs of the said society, for and in behalf of themselves and the rest of the members of said church and society, and John W. Emery, all of Boston, in said Commonwealth, is plaintiff in error, against you as defendants, to show cause, if any there be, why the judgment rendered by the supreme court of the Commonwealth of Massachusetts in said writ of error mentioned should not be corrected, and speedy justice done to the parties in that behalf.

Witness the Honorable Roger B. Taney, Chief Justice of the Supreme Court of the United States, this thirty-first day of October, A. D. 1859.

NATHAN CLIFFORD,
*Associate Justice of the Sup. Court U. S.*

UNITED STATES OF AMERICA,
*Mass. Dist., ss.*

BOSTON, *October* 31, 1859.

I hereby certify that I have notified the Proprietors of the Meeting-house in Federal street, within mentioned, by reading the within citation in the presence and hearing of Elisha Bassett, the clerk of said corporation, and also by giving said Bassett in hand a true and attested copy hereof.

WALTON FREEMAN,
*U. S. Marshal.*

| | |
|---|---|
| Fee, &c..... | $2 06 |
| Copy..... ..... | 1 |
| | $3 06 |

*Copy of Bond.*

COMMONWEALTH OF MASSACHUSETTS.

Supreme Court of said Commonwealth, Suffolk C. ss.—May T., 1855.

THE ATTORNEY GENERAL OF THE COMMONWEALTH OF MASSACHUSETTS, at the relation of the Associate Reformed Presbyterian Synod of New York; the First Associate Reformed Presbyterian Church and Society of Boston; the Reverend Alexander Blaikie, pastor of the said Church and Society; Edward M. Stuart, John Taylor, William Elden, and Samuel Gwynn, ruling elders of the said Church and Society, and the Prudential Committee for managing the temporal affairs of the said Society, for and in behalf of themselves and the rest of the members of said Church and Society; and John W. Emery; all of Boston, in said Commonwealth, Plaintiff,

vs.

THE PROPRIETORS OF THE MEETING-HOUSE IN FEDERAL STREET, IN THE town of Boston, in said Commonwealth.

Know all men by these presents, that we, Alexander Blaikie, John Taylor, Alexander Christian and Thomas C. Christian, all of Boston, gentlemen, are held and stand firmly bound and obliged unto The Proprietors of the Meeting-house in Federal street, in the town of Boston, in said Commonwealth of Massachusetts, in the full sum of five hundred dollars; to the payment of which, well and truly to be made, we hereby bind ourselves, and our executors and administrators, jointly and severally, firmly by these presents.

In witness whereof, we have hereunto set our hands and seals this thirty-first day of October, A. D. 1859.

The condition of this obligation is such, that whereas the attorney general of the Commonwealth of Massachusets, at the relation of the Associate Reformed Presbyterian Synod of New York and others, has this day sued out of the clerk's office of the circuit court of the U. S., Mass. dist., a writ of error, wherein he is plaintiff as aforesaid, and said Proprietors of the Meeting-house in Federal street, in the town of Boston, in said Commonwealth, are defendants; which writ of error is returnable at the next term of the Supreme Court of the United States, to be holden at Washington on the first Monday of December next:

Now, if the said plaintiff in error shall prosecute his said writ of error to effect, and answer all damages and costs if he shall fail to make good his plea, then this bond shall be void; otherwise the same shall remain in full force and effect.

ALEX'R BLAIKIE, [SEAL.]
JOHN TAYLOR, [SEAL.]
ALEXANDEB CHRISTIAN, [SEAL.]
THOS. CHRISTIAN. [SEAL.]

Signed, sealed, and delivered in presence of—
C. CUSHING.

Oct. 31, 1859.

Approved:

NATHAN CLIFFORD,
*Associate Justice Sup. C. U. S.*

A true copy. Attest:

W. H. FULLER, *Clerk.*

*Writ of Error.*

UNITED STATES, *ss.*

The President of the United States to the Judges of the Supreme Court of the Commonwealth of Massachusetts, holden at Boston, within and for the county of Suffolk, in said district, greeting:

[SEAL.]

Because that in the record and process, and also in the rendering of judgment in a suit before you, or some of you, between the Attorney General of the Commonwealth of Massachusetts, at the relation of the Associate Reformed Presbyterian Synod of New York; the First Associate Reformed Presbyterian Church and Society of Boston, the Reverend Alexander Blaikie, pastor of said church and society; Edward M. Stuart, John Taylor, William Elder and Samuel Gwynn, ruling elders of the said church and society, and the Prudential Committee for managing the temporal affairs of the said society, for and in behalf of themselves and the rest of the members of said church and society; and John W. Emery, all of Boston, in said Commonwealth, plaintiff, and The Proprietors of the Meeting-house in Federal street, in the town of Boston, in said Commonwealth of Massachusetts, defendants, in a bill of complaint in equity, wherein the validity of a statute of the State of Massachusetts is drawn in question, a manifest error has intervened, to the great damage of the said plaintiff, as in his complaint has been stated; and as it is just and proper that the error, if any there be, should be corrected in due manner, and that full and speedy justice should be done to the parties aforesaid in this behalf, you are hereby commanded, that if judgment thereof be given, then, under your seal, you do, distinctly and openly, send the record and process in the suit aforesaid, with all things concerning them, and this writ, so that you have the same before the Chief Justice and the associate justices of the Supreme Court of the United States, on the first Monday of December next, at Washington, being the present seat of the national government, that the record and process aforesaid being inspected, they may cause to be done thereupon what of right ought to be done.

Witness the Honorable Roger B. Taney, esquire, Chief Justice of the said Supreme Court, at Washington aforesaid, this thirty-first day of October, in the year of our Lord one thousand eight hundred and fifty-nine, and of the independence of the United States the eighty-fourth.

H. W. FULLER, *Clerk.*

Allowed by Nathan Clifford, associate justice of the Supreme Court U. S.

COMMONWEALTH OF MASSACHUSETTS, *Suffolk, ss.*

Pursuant to this writ, I herewith send the record and process of the suit within mentioned, with all things touching the same, all which are hereto annexed, to the Chief Justice and associate justices of the Supreme Court of the United States within named.

In testimony whereof, I have hereunto set my hand and seal this fifth day of December, A. D. eighteen hundred and fifty-nine.

[SEAL.]

LEMUEL SHAW,
*Ch. Just. S. J. Court.*

COMMONWEALTH OF MASSACHUSETTS,
*Suffolk and Nantucket, ss.*

To all persons to whom these presents shall come, greeting:

Know ye, that among our records of our supreme judicial court, begun and holden at Boston, within the county of Suffolk, and for the counties of Suffolk and Nantucket, on the first Tuesday of March, being the sixth day of said month, in the year of our Lord one thousand eight hundred and fifty-five, sitting as a court of chancery, it is thus contained:

COMMONWEALTH OF MASSACHUSETTS,
*County of Suffolk, ss.*

Supreme Judicial Court.—In Equity.

JOHN H. CLIFFORD, Esquire, Attorney General, &c., &c., at the relation of the Associate Reformed Presbyterian Synod of New York and others, Informant,
and
THE PROPRIETORS OF THE MEETING-HOUSE IN FEDERAL STREET, IN THE TOWN OF BOSTON, Defendants.

Informing, showeth unto your honors, John H. Clifford, esquire, Attorney General of the Commonwealth of Massachusetts, by and at the relation of the Associate Reformed Presbyterian Synod of New York, the First Associate Reformed Presbyterian Church and society of Boston; the Reverend Alexander Blaikie, pastor of the said church and society; Edward M. Stuart, John Taylor, Wil-

liam Elder, and Samuel Gwynn, ruling elders of the said church and society, and the prudential committee for managing the temporal affairs of the said society, for and in behalf of themselves and the rest of the members of said church and society; and John W. Emery, all of said Boston, and humbly complaining, showeth unto your honors, "The Proprietors of the meeting-house in Federal street, in the town of Boston," a corporation duly established by the laws of this Commonwealth.

And the said Attorney General, at the relation aforesaid, informs your honors that he is informed that, on the fourteenth day of May, in the year of our Lord one thousand seven hundred and twenty-nine, one Henry Deering, shopkeeper, of Boston, in the county of Suffolk, in this Commonwealth, did, by a conveyance under seal, duly executed and recorded with Suffolk deeds, lib. forty-three, fol. three hundred and seven, grant, bargain, and sell unto one John Little, of said Boston, gardener, his heirs and assigns forever, in consideration of five hundred and fifty pounds in good and lawful public bills of credit, a certain piece or parcel of land, situate, lying, and being in said Boston, and bounded on the front westerly upon Long Lane, so-called, and there measuring one hundred and twenty-nine feet; northerly by land then of Jonathan Loring, and there measuring ninety-eight feet; easterly on land then of Nathaniel Green, esq., and there measuring one hundred and fifteen feet; southerly on Bury street, so-called, and there measuring one hundred and twenty-six feet and one-half foot, as will more fully appear by the record of said deed, or by reference to an attested copy of the same, here to be produced in this honorable court.

A.—(*Being first amendment as written in margin hereof.*)

*A.*—And the said Attorney General, at the relation aforesaid, further informs your honors, that the said John Little, being minded and disposed to devote his property to the founding and supporting of a church and place of religious worship, to be held and enjoyed forever, for the preaching and maintaining of the doctrine, discipline, worship, and form of government of the church known as the Presbyterian Church of Scotland, and to create and found a trust and charity therefor, did thereafter, to wit, on the 9th day of June, in the year of our Lord 1735, enter into and execute—

B.—(*Strike out the following enclosed in brackets:*)

[That thereafter, to wit, on the ninth day of June, in the year of our Lord one thousand seven hundred and thirty-five, the said John Little, by] an indenture of that date, duly executed and recorded with Suffolk deeds, at liber fifty-one, folio fourteen, in consideration of one hundred and forty pounds and five pence in good public bills of credit, did convey with warranty the premises last

mentioned, particularly describing the same, together with the meeting-house then standing thereon, to George Glen, William Hall, William Shaw, and Andrew Knox, of said Boston, "for themselves, and as a committee chosen and appointed by the rest of the congregation belonging to the Presbyterian meeting-house in Long Lane, in Boston aforesaid, for managing the prudential affairs thereof," saving and reserving to the said John Little, his heirs and assigns forever, his right, title, and interest in and to a certain pew and seat in said meeting-house.

And in the limitations, conditions, and establishing of said trust by the same deed, the said John Little did further recite and declare, that the said piece or parcel of land, meeting-house, and premises, with the appurtenances thereto belonging, saving and reserving as aforesaid, were to be held and enjoyed by the said "George Glen, William Hall, William Shaw, and Andrew Knox, in their capacity aforesaid, and by their several successors in that trust and office forever, but to and for the only proper use, benefit, and behoof of the said congregation (according to the tenures and after the same manner as the Church of Scotland holds and enjoys the lands whereon the meeting-houses are erected) forever, and for no other use, intent, or purpose whatsoever." All of which matters and things will more fully appear by the record mentioned above, or by reference to an attested copy thereof, to which your informant prays leave to refer this honorable court.

C.—(*Amendment inserted in margin.*)

*C.*—And the said attorney, at the relation aforesaid, further informs your honors, that the said John Little and the said George Glen, William Hall, William Shaw, and Andrew Knox, together with certain others then living in said Boston, being Presbyterians, and strongly attached to the doctrine, discipline, and worship of the church known as the Presbyterian Church of Scotland, being minded and disposed to devote their property to the founding and supporting of a church or place of religious worship, to be held and enjoyed forever, for the preaching and maintaining of the said doctrine, discipline, and worship, and to create and found a trust and charity therefor, did severally contribute, the said John Little the land in said deed mentioned, (in whole or in part,) and the said George Glen and others moneys wherewith the said meeting-house was built, and the expenses attending the premises were defrayed, and did thereafter, in and by the said indenture, create and establish the said trust and charity.

And the said Attorney General, at the relation aforesaid, further informs your honors, that the said deed last mentioned, with the said limitations and conditions, and with the trust so created and established, was accepted by the said George Glen and others, as the same

was intended to be conveyed, granted, and treated by the said John
D. Little, [D.—And by the said John Little, George Glen, and others, as aforesaid, and by the said deed] and was so held by the said grantees in trust, according to the terms of the same, for the sole use, benefit, and behoof of the said congregation in said deed mentioned, and their successors forever.

And the said Attorney General, at the relation aforesaid, further informs your honors, that the said deed, so made by the said John Little, and so accepted by the said George Glen and others, created a trust or charitable estate of a very high character, to wit, for the support, encouragement, advancement, and perpetuity of the Christian religion, according to a certain and particular form of worship, government, and discipline, and according to a certain and particular faith and belief, then obeyed, conformed to, taught, and believed by said John Little and the said Glen and others, and by the said congregation in said deed mentioned, and known as the Scotch Presbyterian worship, government, discipline, and belief; which said trust or charitable estate the said John Little [and the said John Little, George Glen, and others] had good right to create and establish, and the said George Glen and others had good right to accept, and did accept.

Amendment interlined.

And the said Attorney General, at the relation aforesaid, further informs your honors, that the said meeting-house and land were given, granted, and conveyed, as aforesaid, by the said John Little, [and by the said John Little, George Glen, and others,] with the express understanding, and no other, that they were always to be held and enjoyed by the said George Glen and others, and by their successors in office, forever, for the sole use and benefit of the said congregation in said deed mentioned, which was a [Scottish] Presbyterian congregation, or for the use of a [Scottish] Presbyterian society or congregation, the successor or successors of the then society, and by and for no other person or persons, society or societies.

Amendment interlined.

Two amendments.

That the limitations and conditions of the said deed expressly restrict the use, occupation, and enjoyment of the said premises to a [Scottish] Presbyterian Trinitarian society, and none other, and prohibit the same to the use and enjoyment of any other society, and more especially that of a Congregational Unitarian society.

Amendment.

And the said Attorney General, at the relation aforesaid, further informs your honors, that he is informed that the tenures by which the Church of Scotland held and enjoyed the lands whereon the meeting-houses were erected, in the year seventeen hundred and thirty-five, was a strict tenure, by which, whenever a society,

parish, or congregation of the said church ceased to be [Scottish] Presbyterian in any respect, either in the profession of the faith of the Church of Scotland, which was the [Scottish] Presbyterian faith, or in the form of worship, which was the [Scottish] Presbyterian form, authorized by the said church, or in the government and discipline of the said church, which was the [Scottish] Presbyterian government and discipline, that then, and in that case, the said congregation, parish, or society, by the mere fact of the case, ceased to hold and enjoy the lands on which the meeting-house was erected, and that the same thereby passed, as a matter of course, into the jurisdiction and possession and under the control of the general assembly of the Church of Scotland, or of the proper authorities acting under it, to be used and enjoyed by another [Scottish] Presbyterian society, congregation, or parish, that might wish to occupy the premises, and by none other.

Amendment.

Two amendments.

Amendment.

Amendment.

And the said Attorney General, at the relation aforesaid, further informs your honors, that he is informed, that according to the tenures by which the Church of Scotland held and enjoyed the lands on which meeting-houses were erected, in the year seventeen hundred and thirty-five, by which tenure the said land and church in Long Lane were forever to be held, no Unitarian congregation or society could hold lands under the Church of Scotland; nor could any Scottish Presbyterian society, nor any society formerly belonging to the Church of Scotland, subsequently becoming an Unitarian society, hold or enjoy the lands formerly held and enjoyed by it as a church of Scotland, or as one of the churches or congregations of the Church of Scotland; but that whenever any religious society in Scotland, connected with the Church of Scotland, once holding its lands by the same tenure by which the Church of Scotland in the year 1735 held and enjoyed the lands whereon the meeting-houses were erected, ceased to be a Scottish Presbyterian society, and became an Unitarian society, it ceased to have any right, title, or interest in the lands belonging to the said church so held and enjoyed by the said society, but the same reverted to the general assembly of the Church of Scotland, or to their proper agents, officers, or authorities, or to any society of the Church of Scotland that might wish to occupy the premises.

And the said Attorney General, at the relation aforesaid, further informs your honors, that he is informed that the Church of Scotland was in the year 1735 a Presbyterian church, of Presbyterian forms, faith, government, and discipline, and not a Congregational church.

That it was a Calvinistic Trinitarian church, holding and teaching "the confession of faith and the catechisms known as the Larger

and Shorter Westminster catechisms, the directories, forms of government, discipline, &c., then of public authority in the Church of Scotland," being contained in a book published by the authority of said church, a copy of which is here in court to be produced, and to which the said Attorney General prays leave to refer.

And the said Attorney General, at the relation aforesaid, further informs your honors, that he is informed that the said Church of Scotland, in the year 1735, was in no respect an Unitarian church, but was in matters of form, faith, government, and discipline, in very many and most material matters, directly opposed to the forms, faith, government, and discipline of what is known and called an Unitarian church or society, and more especially to the forms, faith, government, and discipline of the Unitarian church or society now occupying the premises mentioned in this information and bill.

And the said Attorney General, at the relation aforesaid, further informs your honors, that the said society in Long Lane, at the time of its foundation, about the year seventeen hundred and thirty, and at the time of the making of the said deed by the said John Little, in the year 1735, professed, taught, and conformed to the government and discipline of the Church of Scotland, as the same is set out and declared in the confession of faith, catechisms, directories, forms of church government, discipline, &c., which were then of public authority in the Church of Scotland, and contained in the book last mentioned, as far as the same were adapted to the civil government under which said society was placed.

And that the said society continued to be, in all respects, except as aforesaid, a church after the form and pattern of the Church of Scotland, from the said year 1730 down to the year 1786, and was in matters of religious faith, worship, government and discipline, in all respects, like and precisely similar to the Church of Scotland, as it existed during that time in the Kingdom of Scotland, in the realm of Great Britain.

That the said congregation mentioned in the said deed of John Little was in all respects a Presbyterian congregation after the manner and constitution of the Church of Scotland, adopting the same modes of worship, and professing the same faith, and being governed by the same discipline.

That a principal and prominent part of said faith professed by the said society in Long Lane consisted in the belief in the divinity of Jesus Christ, and particularly of the Trinity of the Deity or Godhead, in the belief of the doctrine of original sin, of the atonement, of predestination, of particular election, and of spiritual regeneration by the Holy Ghost, and of the doctrines contained in the Larger and Shorter Westminster catechisms, all being part and portion of what is now and was then known as Calvinistic or Orthodox Trinitarianism. All which matters of faith and belief,

and especially those of the divinity of Jesus Christ, and of the Trinity, of the Deity or Godhead, and of the atonement, of original sin, of predestination, of particular election, and the doctrines contained in said catechisms, are inconsistent with, and opposed to the faith and belief called and known as Unitarianism, now held, professed and taught by the defendants now occupying the premises in this bill mentioned.

That the said John Little was a member of the said society, and a communicant of said church in Long Lane, in the year 1735, a man of distinguished piety, and strongly attached from his youth up to the Scotch Presbyterian church, professing all the doctrines of the faith of said church, and especially the doctrines of Calvinistic Trinitarianism as they were taught in the books of the said Church of Scotland above mentioned, and especially those known and called the Large and Shorter Westminster catechisms.

That the said John Little was not a Congregationalist nor an Unitarian, and that he did not intend to establish, and did not establish, the trust aforesaid for the use, benefit or behoof of any Congregational or Unitarian society, but for a [Scottish] Presbyterian and Trinitarian society, and no other.

Amendment.

And that the said John Little was a [Scottish] Presbyterian.

Amendment.

E.—(*As in margin.*)

*E.*—That the said George Glen and others were members of the said society and congregation, and were attached to the said church, and professed the said doctrines, and were not Congregationalists, nor Unitarians, but were Scottish Presbyterians; and did not intend to establish, and did not establish, the trust aforesaid, for the use, benefit or behoof of any Congregational or Unitarian society, but for a Scottish Presbyterian and Trinitarian society, and no other.

And the said Attorney General, at the relation aforesaid, further informs your honors, that he is informed that a [Scottish] Presbyterian church differs in many and very important matters of government, discipline and worship from a Congregational church, as will more fully appear by reference to the said book above mentioned, and here filed in this honorable court with this bill and information.

Amendment.

That a material part of the form of worship in said Church of Scotland, and one of the distinguishing features of said church, is the use of a particular version of the Psalms of David in the celebration of public worship, namely: the version known as that of Rouse, adopted by said church about the year 1650.

That the said version, and no other, was used in all the Presbyterian churches in Scotland, in the year 1735, and is the only one now used by the Church of Scotland.

And that the said version, and none other, was used in the said

church in Long Lane, at the establishment of the same, and down to the year 1786, and is the only one now used or ever used by the Associate Reformed Presbyterian Church in this country, or by any churches or societies connected with said church; and is the only one ever used by the church and society here present as relators; and is the only one used by Presbyterian societies in this country, of Scottish origin.

And the said Attorney General, at the relation aforesaid, further informs your honors that he is informed that the said confession of faith, catechisms, directories, forms of church government, discipline, &c., which were of public authority in the Church of Scotland in the years 1725, 1730, 1735, 1783, and 1786, as far as they are or were adapted to the civil government of the said society and church in Long Lane, at the periods above mentioned, were identical with the confession of faith, catechisms, directories, forms of church government, discipline, &c., known as the constitution and standards of the Associate Reformed Presbyterian Church of North America, which have always been the rule of Presbyterian societies of Scotch origin in this country, and which are now, and have always been professed and taught, and conformed to by the Associate Reformed Presbyterian Synod of New York here present as relators, and by the First Associate Reformed Presbyterian Church and Society of Boston here present as relators.

And the said Attorney General, at the relation aforesaid, further informs your honors, that he is informed that the church known as the Associate Reformed Presbyterian Church of North America, by which a large proportion of all the churches in this country of Scottish Presbyterian origin is now known, is in all material matters the same as the ancient Church of Scotland as it existed in the year 1735.

That the said association was made in or about the year 1782, and comprises a large majority of the churches in this country, professing the faith of the Church of Scotland, as it now does, and has always existed, and corresponds identically with the said Church of Scotland, as it existed in the year 1735, in all matters of form, faith, government, worship and discipline, except as the same are altered, changed or affected, by the republican nature of our institutions.

That the Synod of the said Associate Reformed Presbyterian Church has, by its solemn acts and recorded votes, expressed its attachment to and connection with the said Church of Scotland, as will appear by the following words contained in a record here in court to be produced, to wit:

"They wish posterity may know that once they belonged to the Church of Scotland; that they carried with them into America the system of truth adopted by that church, and the substance of the testimonies against deviations from that system, and that they

esteem it their honor and duty to support their connection with those brethren, who still labor to preserve it in its purity, as far as such support is consistent with their independence upon any foreign judicatory."

And the said Attorney General, at the relation aforesaid, further informs your honors that he is informed that the said congregation mentioned in the said deed of John Little was established about the year seventeen hundred and twenty-seven, under the pastoral care of the Reverend John Moorhead, a Presbyterian minister of the school known as the Scotch Presbyterian, and who was previously a member of the Presbytery of Edinburg, or of some Presbytery in Scotland, and then a member of the "Presbytery at Eastward," in this Commonwealth, and continued to flourish under his care for about forty-six years, to wit, until the year seventeen hundred and seventy-three, as a Scotch Presbyterian Society, after the manner of the Church of Scotland, when the said Moorhead deceased.

That, thereafter, there was a period of about ten years, during which the said church and congregation were without a pastor except for occasional services,

Amendment: Strike out these 3 lines. [which were principally supplied by direction of the Presbytery of Boston, under whose authority said church and congregation then existed.]

That thereafter, to wit, in the year seventeen hundred and eighty-three, the Reverend Robert Annan, a Presbyterian minister of the faith of the Church of Scotland, a member of the Presbytery of New York, subordinate to the Associate Reformed Synod of New York, and a member of the Associate Reformed Presbyterian Church of North America, was duly installed and inducted as the pastor of the said church and society, in which office he continued until the year seventeen hundred and eighty-six, when he removed from this Commonwealth.

And the said Attorney General, at the relation aforesaid, further informs your honors, that he is informed that soon after the settlement of the said Reverend John Moorehead over the said society, to wit, in the year seventeen hundred and forty-five, a Presbytery was established by the said Moorehead and others, called the "Presbytery of Boston," to which the said society belonged, and of which the said John Moorehead was a prominent and influential member.

Amendment: Strikes out this paragraph. [That the said church and society in Long Lane continued in fellowship for many years, to wit, until the year seventeen hundred and eighty-two, with the said "Presbytery of Boston," when the said society withdrew, and formally and legally joined the Presbytery and Synod of New York, with which it ever after continued to be legally connected.]

That the said Presbytery of Boston in the year seventeen hundred and seventy consisted of twelve congregations, of which that of the Reverend John Moorehead in Long Lane was one.

That they subsequently formed themselves into three Presbyteries, and about the year seventeen hundred and seventy-six they were all joined in one body, called the "Synod of New England," which body continued to exist until the year seventeen hundred and eighty-two, when it was dissolved, and the said church and society in Long Lane then became connected with the Presbytery and Synod of New York, with which it ever afterwards continued to be associated.

And the said Attorney General, at the relation aforesaid, further informs your honors, that he is informed that all these changes and memberships with different Presbyteries and Synods did in nowise alter or in any way affect the relations of the said church or society in Long Lane in matters of faith, government, worship, or discipline with the Church of Scotland, or the Associate Reformed Presbyterian Church of this country, but were merely changes of convenience or necessity in matters of discipline so far as concerned the relation of said church with others of the same faith, discipline, and fellowship.

And the said Attorney General, at the relation aforesaid, further informs your honors, that he is informed that it will appear from the records of the said Synod and Presbytery of New York that the said Robert Annan was duly and legally called from the said Presbytery of New York, of which he was then a member, to the pastoral charge of the said society in Long Lane in the year seventeen hundred and eighty-three by the vote and request of the said society addressed to said Presbytery.

That upon said vote and request certain measures were taken and had by and between the said society, the said Presbytery and the said Annan, by which the relation of dependence and control as aforesaid were duly recognised, acknowledged, and asserted; and that thereupon the said Robert Annan was by said Presbytery duly installed in the ministry over said congregation and church in Long Lane in the year seventeen hundred and eighty-three.

That thereafter, to wit, in the year seventeen hundred and eighty-six, the said Annan was duly removed from the ministry over the said society at his own request by the said Presbytery according to the forms in such cases made and provided.

That said Annan was at the time of his removal, and until his decease, many years afterwards, a member of said Synod of New York.

And the said Attorney General, at the relation aforesaid, further informs your honors, that he is informed that the said Presbytery and Synod of New York have never relinquished or discharged their claim or right to control, govern, and direct the said

church and society in Long Lane as in the time of the said Annan, but continue to this day to claim a right to exercise the same.

That the society and church here present as relators, known as the First Associate Reformed Presbyterian Church and Society of Boston, was duly organized by the said Presbytery of New York as a religious society, after the Presbyterian order, in the year eighteen hundred and forty-six, as members of and connected with and under the jurisdiction of the said Presbytery and Synod of New York, which said Presbytery and Synod is a religious body, duly established, having full supervisory power in ecclesiastical matters over all the churces connected with it, and especially over the church and society here present as relators. And that previous to the year seventeen hundred and eighty-six the said Presbytery and Synod exercised the same power of supervision and control over the said society in Long Lane. And that the said last mentioned church and society, here present as relators, does now consist of about one hundred and thirty communicants of said church, and about three hundred adult members of said society.

And the said Attorney General, at the relation aforesaid, further informs your honors, that he is informed that the Reverend Alexander Blaikie, here present as a relator, is now minister of the said First Associate Reformed Presbyterian Church and Society of Boston, and is now, and was for many years previous to the year eighteen hundred and forty-six, a member of the said Synod of New York, and was duly installed in his said ministry by the said Presbytery of New York, and has continued such minister ever since.

That the said last mentioned church and society here present as retators do now profess and teach, and have always professed and taught the same faith and conformed to the same discipline as did the said society in Long Lane mentioned in the said deed of John Little, adopting as their constitution the confession of faith, catechisms, directories, forms of church government, worship and discipline, those known and established as the constitution and standards of the Church of Scotland in the year seventeen hundred and thirty-five, excepting as they are necessarily modified to conform to the civil government under which said church and society is placed.

And the said Attorney General, at the relation aforesaid, further informs your honors, that he is informed, that in the year seventeen hundred and eighty-six, a majority of the said congregation belonging to the said church in Long Lane, contrary to the intention of the said John Little [and of the said John Little, George Glen and others] as expressed in his deed aforesaid, [and contrary to the said deed, and contrary to the trust and charity aforesaid] and contrary to right, resolved themselves into a society different from a Presbyterian society, and different from a society belonging to the Church of Scotland, and different

Two amendments.

from the said society as it existed in the year seventeen hundred and thirty-five, and under the ministrations of said Moorehead and the said Annan, and have ever since continued, with various changes of form of worship, government, faith and discipline, to be a society other than a [Scottish] Presbyterian society, and other Amendment. than the said society as it existed previous to the said year seventeen hundred and eighty-six.

That at the time aforesaid, to wit, in the year seventeen hundred and eighty-six, a minority of the said congregation objected to the said change, and desired to be and remain in and under the ancient form of Presbyterian worship, government, and belief as it existed in the year seventeen hundred and thirty-five, but the said minority was overborne, and was obliged to submit to the wrong and injury done by the said majority.

Whereupon, as the said Attorney General says, the said trust so established by the said John Little, [and by the said Amendment. John Little, Glen and others] and so accepted by the said Glen, Shaw and others as aforesaid, for the said congregation, became and was wholly perverted, abused and misapplied.

And the said Attorney General, at the relation aforesaid, further informs your honors that he is informed that thereafter, and about the year seventeen hundred and eighty-seven, the Reverend Jeremy Belknap, an Orthodox Congregational minister, and not a Presbyterian minister after the order of the Church of Scotland, and not a minister of the faith and discipline of the said John Amendment. Little [of the said Glen and others, and of the said congregation as it existed in the year 1735,] and of the said Moorehead and the said Annan, and not a member of any Presbytery of the Associate Reformed Presbyterian Church of North America, was installed over the said church and society as minister and pastor by and according to what was then and is now known as the Orthodox or Congregational form of installation, and not by the Presbyterian form.

That he was not installed as aforesaid by the Presbytery of New York, nor by any Presbytery; but that the said Presbytery of New York, having jurisdiction and control in the premises, did, with the minority of the said congregation, object to the said installation, and to the said action and conduct of the said majority, and did not consent thereto.

That the said Reverend Jeremy Belknap did, immediately thereafter, begin his ministerial and pastoral duties in the said church and society, he and they totally subverting and destroying the ancient order of things, and introducing forms of worship, rules of discipline, and opinions of belief different from and hostile to those practised, taught, and believed under the said Moorhead and Annan, and contrary to the intent of the said deed of John Little.

That the said changes and subversions introduced by and under the said Belknap consisted, in part, in the substitution of congregational discipline for the discipline of the Presbyterian church, and in the use of hymns and psalms in the celebration of divine worship other than those of the said version of Rouse, authorized and enjoined to be used by the [Scottish] Presbyterian church, and by the Church of Scotland, and by the Associate Reformed Presbyterian Church of North America, and which were the only psalms used by the said society in Long Lane, from the period of its foundation until the year seventeen hundred and eighty-six.

Amendment.

And the said Attorney General, at the relation aforesaid, further informs your honors, that he is informed that the said meeting-house and land in Long Lane continued for a long time thereafter, to wit, from the year seventeen hundred and eighty-six to the year eighteen hundred and fifteen, to be occupied, contrary to the intention of John Little, [and of John Little, George Glen, and others, and contrary to the said deed and to the charity and trust aforesaid,] and contrary to right, by a society professing to be an Orthodox and Trinitarian Congregational society as aforesaid, and not by a Presbyterian society.

Amendment.

And that thereafter, to wit, about the year eighteen hundred and fifteen, the said congregation again changed its form of faith and discipline, and became what was then and is now known as an Unitarian society, and has ever since continued to be an Unitarian society or congregation.

That by the said last mentioned change the said trust so created by the said John Little [and by the said John Little, George Glen, and others, and by the said deed] became and was wholly perverted, abused, and misapplied; in that, not only the discipline and worship of the Church of Scotland and of the Associate Reformed Presbyterian Church of North America, and of all Presbyterian churches, and particularly of the church in Long Lane, as it was observed and enforced in the year seventeen hundred and thirty-five, and as it was practised, obeyed, and conformed to by the said John Little, [George Glen and others, and by the said congregation,] was wholly overturned, and another discipline and worship substituted in its stead.

Amendment.

Amendment.

And that also the distinguishing forms of faith of the Presbyterian church and of the said church in Long Lane, as it existed in the year seventeen hundred and thirty-five, and up to the year seventeen hundred and eighty-six, particularly the belief in the Trinity, in the divinity of the Son of God, in the atonement, in original sin, in predestination, particular election, and spiritual regeneration by the Holy Ghost, and other doctrines known as

those peculiar to Calvinistic Trinitarianism, and taught in the Westminster Catechisms, and in the standards hereinbefore mentioned as of authority in Presbyterian churches and in the Church of Scotland, and in the Associate Reformed Presbyterian Church of North America, and which were professed by the said John Little [by the said Glen and others] and by the said congregation in Long Lane, from the year seventeen hundred and thirty up to the year seventeen hundred and eighty-six, were wholly abrogated and denied, and other doctrines, hostile to those last mentioned, publicly taught in the pulpit of said church, and believed and professed by the said congregation.

Amendment.

And the said Attorney General, at the relation aforesaid, further informs your honors, that he is informed that, at the time of the execution of the said deed by the said John Little, to wit, in the year seventeen hundred and thirty-five, there was no sect or class of Christians in this community or in this Commonwealth known as Unitarians, and that none such were known at that time in Scotland or in the colonies of Great Britain, or could exist in said colonies or in the realm of Great Britain, under the laws of Great Britain; and that no other doctrines of Christian belief were recognised or professed in this Commonwealth, in the year seventeen hundred and thirty-five, except Orthodox Trinitarianism.

And the said Attorney General, at the relation aforesaid, further informs your honors, that he is informed, and therefore charges, that the said meeting-house and lands in said deed of John Little mentioned are not now held and enjoyed by the same tenures as those by which the Church of Scotland held and enjoyed the lands whereon the meeting-houses were erected in the year seventeen hundred and thirty-five.

And the said Attorney General, at the relation aforesaid, further informs your honors, that he is informed and that the said John W. Emery, of Boston, one of the relators to this bill, is now, and has been for a long time, a pewholder and proprietor of the said church, now in the possession of these defendants.

That the said John W. Emery is very desirous that the said land and church should be given up to the society here present as relators, and restored to the occupation and possession of a church and society similar to that existing in Long Lane in the year seventeen hundred and thirty-five, and similar to the one to which the said John Little [George Glen and others] belonged, and that the occupation of the said premises should be decreed by this honorable court to belong to the said First Associate Reformed Presbyterian Church and Society of Boston, here present as relators.

Amendment.

And the said Attorney General, at the relation aforesaid, further informs your honors that the street called in the said deed of John Little, "Long Lane," is now and has been for many years known

as "Federal street," and the street called "Bury" street, in said deed, is now and has been for many years called "Channing street," in said Boston.

And that the premises conveyed by said John Little and herein mentioned, are those known as the meeting-house formerly called Dr. Channing's church, and now occupied by the Unitarian society, worshipping under the pastoral care of the Reverend Ezra Stiles Gannett, D. D., in said Federal and Channing streets, with the lands now in the occupation and possession of the said Unitarian society.

Which said society is now a corporation, duly established by the laws of this Commonwealth under an act of incorporation passed about the year eighteen hundred and five.

And the said Attorney General, at the relation aforesaid, further informs your honors that he is informed that the said First Associate Reformed Presbyterian Church and Society of Boston did, by their solicitor, John C. Adams, esquire, on the twenty-second day of September, in the year eighteen hundred and forty-nine, make a formal demand of the premises now occupied by the said defendants, by a letter addressed to the committee of the said church in Federal street, a copy of which is here in court to be produced.

Which said demand the said defendants wholly refused to comply with; which said refusal is also here in court to be produced.

And the said Attorney General, at the relation aforesaid, further informs your honors that he is informed that the said church and society, defendants in this bill, have now in their possession certain books of record of the actings and doings of the said society in Long Lane previous to the year seventeen hundred and eighty-six, and since, which said books contain many matters and things of great value to your orator and informant and to the relators here present, in the nature of evidence, and which, if produced, would tend to establish the claim of the said relators.

That the said First Associate Reformed Presbyterian Church and Society above mentioned have, by their said solictor, demanded permission to examine the said books of record, which said demand has been refused, as will appear by copies of the said demand and refusal, herewith to be produced.

And the said Attorney General, at the relation aforesaid, further informs your honors, that he is informed that the said books of record of the actings and doings of the said society in Long Lane previous to the year seventeen hundred and eighty-seven belong of right to these relators.

Wherefore he prays that the said books may be decreed to be given up to your informant for the said relators, or to be produced in this honorable court, to be herein deposited for the benefit of your orator and informant and the said relators, as well as for the said defendants.

And the said Attorney General, at the relation aforesaid, further informs your honors that he is informed that no manner of exception can be taken to the prayer of your informant and orator, at the relation aforesaid, hereinafter contained, by reason of the lapse of time, or for any delay in the making of the said demand for the said premises:

Because no plea of time, or of the statute of limitations, can be made as a defence to the perversion or abuse of a charity or trust in a bill of this nature;

Because these relators have never done any solemn or public act, by which they recognised the right of these defednants, or of any one, to use or enjoy the premises here sought to be recovered;

Because the said First Associate Reformed Presbyterian Church and Society have had no existence in this Commonwealth until since the year eighteen hundred and forty-six, and were not advised of their rights in the premises until a few months previous to the making of the said demand above mentioned;

Because the said minority, who were opposed to the change made by the said congregation in the year seventeen hundred and eighty-six, were a feeble company, unable to strive with the said majority;

And because the said change, first made by the said majority in the year seventeen hundred and eighty-six, was a change in discipline and form of worship, and not a material change in doctrine, for which reason the said minority were less urgently and immediately moved and incited to take active measures for redress of the breach of the trust and the perversion of the charity herein complained of.

But the said Attorney General says, that he is informed that the said last mentioned change, by which the said society became an Unitarian church and society, was a very material one, both in discipline, forms of worship and opinions of belief, and was a change never contemplated by the said minority or the said majority, in the year seventeen hundred and eighty-six, and would not have been permitted by the said minority or the said majority, had it been attempted to be made, while they had the power to resist it.

That the said last mentioned change was made about the year eighteen hundred and fifteen, and after the said minority and the said majority, or the most of them, were deceased.

That the jurisdiction of this honorable court in matters of trust and charities has not been until within a few years past sufficient for the full and proper consideration of matters of this nature.

And therefore he says that the equity of this bill is in no manner weakened or impaired for the causes aforesaid.

And the said Attorney General, at the relation aforesaid, further informs your honors that he is informed that the premises herein

mentioned, now in the occupation of these defendants, are of great value, but of what value your orator cannot state.

And that the annual rents and profits of the same are of great value, derived from the rents of pews in the church occupied by said defendants, and from the rents of lands so occupied by them, included in the said deed of John Little. But of what value the said rents and profits are, your orator has not been informed and cannot state.

Which said rents and profits have been for a long time past, to wit, from the year eighteen hundred and forty-four up to this time, received by these defendants and applied to their use contrary to right.

And the said Attorney General, at the relation aforesaid, well hoped that no disputes would have arisen touching the rights of the said relators to hold, occupy, and enjoy the premises in this information and bill of complaint described, under the trust aforesaid, and to have execution and benefit of the said trust, and that the defendants would have complied with the reasonable request of the said relators to deliver up the said premises, and execute or stand charged with the said trust, as these defendants in conscience and equity ought to have done.

But now so it is, may it please your honors, that these defendants, contriving how to wrong and injure these relators and your informant and orator in the premises, absolutely refuse to comply with such request.

All which actings and doings of the said defendants are contrary to equity and good conscience, and tend to the manifest wrong and injury of these relators, and of your informant and orator in the premises.

In consideration whereof, and forasmuch as these relators and your orator and informant are remediless in the premises, according to the strict rules of the common law, and can only have relief in a court of equity, where matters of this kind are properly cognizable and relievable:

To the end, therefore, that the said defendants may true answer make, under their corporate seal, to the matters herein charged and stated, and may upon the several and respective corporal oaths of their proper officers, to the best and utmost of their several and respective knowledge and belief, full, true, direct, and perfect answer make to all and singular the matters aforesaid, and that as fully and particularly as if the same were here repeated and they and every of them distinctly interrogated thereto, and more especially that the said defendants, the said corporation, may in manner aforesaid answer and set forth:

1. Whether the said conveyance, from the said Henry Deering to the said John Little, was made as is stated in this bill.

2. Whether the said conveyance was made by the said John

Little to George Glen, William Hall, William Shaw, and Andrew Knox, as is stated in the bill.

3. Whether the limitations and conditions of the last mentioned deed are not, as they are stated to be, in this bill.

4. Whether the said last mentioned conveyance did not create a trust or charitable estate as is in this bill stated, and for the particular object therein stated; and whether the same was not so accepted by the said Glen and others, as is stated in this bill.

5. Whether the said meeting-house and land so conveyed by the said John Little was not intended by him for the sole use, occupation, and enjoyment of the said society, in said deed mentioned, and of their successors forever, as is stated in this bill.

6. Whether it was not the intention of the said Little, expressed in said deed, that the said premises shall be forever enjoyed by a [Scottish] Presbyterian Trinitarian society, and none other, and not by a Congregational Unitarian society, as is stated in this bill.

Amendment.

F.—(*Amendment inserted as in margin.*)

*F.*—Whether the said meeting-house and land so conveyed by the said John Little was not intended by the said John Little, George Glen, and others, for the sole use, occupation, and enjoyment of the said society, in said deed maintained, and of their successors forever, as is stated in the bill. Whether it was not the intention of the said Little, Glen, and others, that the said premises should be forever enjoyed by a Scottish Presbyterian Trinitarian society, and none other, and not by a Congregational Unitarian society?

7. Whether by the tenures by which the Church of Scotland held and enjoyed the lands whereon the meeting-houses were erected in the year seventeen hundred and thirty-five, whenever a church, society, parish, or congregation, ceased to be [Scottish] Presbyterian in any respect, the said church, society, parish, or congregation did not cease to have any right to hold, use, or enjoy any of the lands or meeting-houses held or enjoyed by said church, parish, or congregation, as is stated in this bill; and whether the same did not pass into the jurisdiction and control of the general assembly, or of the authorities acting under it, to be used or enjoyed by another [Scottish] Presbyterian society, as is stated in this bill.

Amendment.

Amendment.

8. Whether any Unitarian society in the year seventeen hundred and thirty-five could hold lands under the Church of Scotland.

9. Whether in the year seventeen hundred and thirty-five a religious society formely belonging to the Church of Scotland, subsequently becoming an Unitarian society, could hold and enjoy

the lands formerly belonging to it, as a Church of Scotland, or as one of the churches or congregations of the Church of Scotland.

10. Whether in the year seventeen hundred and thirty-five, if a Presbyterian society in Scotland, once holding its lands by the same tenures by which the Church of Scotland then held and enjoyed the lands whereon the meeting-houses were erected, ceased to be a Scotch Presbyterian society, and became an Unitarian society, it did not thereby cease to have any right, title or interest in the lands belonging to said church, so held and enjoyed by the said society, and whether the same did not revert to the general assembly or to its officers, or to another Presbyterian society, as is stated in this bill.

11. Whether the Church of Scotland was not, in the year seventeen hundred and thirty-five, a Presbyterian church, of Presbyterian forms, faith and discipline, and not a Congregational church, as is stated in this bill.

12. Whether it was not a Calvinistic Trinitarian church, teaching and holding the confession of faith and the catechisms known as the Larger and Shorter Westminster catechisms, the directories, forms of government, discipline, &c. contained in the book herewith filed, as is stated in this bill.

13. And whether the same, as contained in said book, was not then of public authority in the said Church of Scotland, as is stated in this bill.

14. Whether the said Church of Scotland, in the year seventeen hundred and thirty-five, was in any respects an Unitarian church, and in what respects, if any.

15. Whether the said Church of Scotland was not, in the year seventeen hundred and thirty-five, directly opposed in many matters of form, faith, government and discipline, to what is known as an Unitarian church or society; and if so, in what matters.

16. And whether the said Church of Scotland, in the year seventeen hundred and thirty-five, was not opposed to the forms, faith and discipline of the Unitarian church or society, now occupying the premises mentioned in this bill.

17. Whether the said society in Long Lane did not, in the year seventeen hundred and thirty, and at the time of the making of said deed by John Little, profess and teach the faith and conform to the discipline and government of the Church of Scotland, as the same are set forth in the said book above mentioned, as far as the same were adapted to the civil government under which the said society was placed, as is stated in this bill.

18. Whether the said society in Long Lane did not continue to be in everthing except in matters of civil government, from the year seventeen hundred and thirty to the year seventeen hundred and eighty-six, a church after the form and pattern of the Church

of Scotland, as is stated in this bill; and if not, wherein was the difference.

19. Whether the said congregation in Long Lane was not in all respects a Presbyterian congregation, after the manner and constitution of the Church of Scotland, with the same form of worship, faith and discipline as is stated in this bill; and if not, in what did the difference consist.

20. Whether a principal and prominent part of the faith professed by the said church and society in Long Lane did not consist in the belief of the Divinity of Jesus Christ, and in the Trinity of the Deity or Godhead, in the doctrine of original sin, of the atonement, of predestination, of particular election, of spiritual regeneration by the Holy Ghost, and of the doctrines contained in the Larger and Shorter Westminster catechisms, as is stated in this bill; and if not, in what the faith of the said church and society did consist.

21. And whether the said matters of faith and belief are not all of them, or some of them, and if any, which of them, opposed to and inconsistent with the faith and belief known as Unitarianism, as is stated in this bill, and with the faith held, professed and taught by these defendants, as is stated in this bill.

22. Whether the said John Little was a member of the said church and society in Long Lane in the year seventeen hundred and thirty-five, and whether he was attached from his youth to the Scotch Presbyterian church, and whether he was a communicant of said church in Long Lane, and whether he professed the faith known as the Calvinistic Trinitarian faith, as it is taught in the book mentioned above as of standard authority in the Church of Scotland, and especially taught in the catechisms known as the Larger and Shorter Westminster catechisms, as is stated in this bill; and if not, what was the faith of the said John Little.

Amendment. 23. Whether the said John Little was or was not an Unitarian, or a Congregationalist, or a [Scottish] Presbyterian.

Amendment. 24. And whether he did or did not intend to establish, and did or did not in fact establish, the trust in this bill mentioned, for the use, benefit or behoof of a Congregational or Unitarian society, or of a [Scotish] Presbyterian and Trinitarian society, and which.

Amendment. 25. And whether the said John Little was or was not a [Scottish] Presbyterian.

G.—(*Amendment inserted as in margin.*)

*G.*—Whether the said George Glen and others were members of the said church and society in Long Lane.

Whether they were attached to the doctrine, discipline and worship of the Scottish Presbyterian church; and whether they professed and conformed thereto, or whether they were Congregationalists or Unitarians.

Whether the said John Little, George Glen and others, did or did not intend to establish, and did not in fact establish, the charity and trust in this bill mentioned for the purposes herein set forth.

Amendment.

26. And whether a [Scottish] Presbyterian church differs in any, and what, respects from a Congregational society.

27. Whether a material part of the form of worship in the said Church of Scotland, and a distinguishing feature of said church, is not the use of the particular version of the Psalms of David, known as Rouse's version, as is stated in this bill.

28. Whether the said version, and no other, was used in all the Presbyterian churces in Scotland in the year seventeen hundred and thirty-five, and is the only one now used by the said Church of Scotland, and was the only one used in the said church in Long Lane at the establishment of the same, and down to the year seventeen hundred and eighty-six.

29. And whether it is not the only one now used or ever used by the Associate Reformed Presbyterian Church in this country.

30. Or by any churches or societies connected with said church.

31. And whether it is not the only one ever used by the said church and society here present as relators.

32. And is not the only one used by Presbyterian societies in this country, of Scottish origin.

33. Whether the said confession of faith, catechisms, directories, forms of church government, discipline, &c., which were of public authority in the Church of Scotland in the years seventeen hundred twenty-five, seventeen hundred thirty, seventeen hundred eighty-three, and seventeen hundred eighty-six, as far as they are or were adapted to the civil government of the said society and church in Long Lane at the periods above mentioned, were identical or not with the confession of faith, catechisms, directories, forms of church government, discipline, &c., known as the constitution and standards of the Associate Reformed Presbyterian Church of North America, as is stated in this bill; and if they are or were different in any respects, in what respects.

34. And whether the same constitution and standards last mentioned have or have not been always the rule of Presbyterian societies of Scotch origin in this country, as is stated in this bill.

35. And whether the same are not now and always have been professed, taught, and conformed to, by the Presbytery of New York, under the Associate Reformed Synod of New York, and by the First Associate Reformed Presbyterian Church and Society of Boston, here present as relators, as is stated in this bill.

36. And whether the church known as the Associate Reformed Presbyterian Church of North America is not, in all material

matters, the same as the ancient Church of Scotland in the year seventeen hundred and thirty-five, as is stated in this bill.

37. Whether the said association was not made in the year seventeen hundred and eighty-two, and whether it does not comprise a large majority of the churches in this country professing the faith of the Church of Scotland as it does now and has always existed, as is stated in this bill.

38. Whether it does not correspond with the Church of Scotland as it existed in the year seventeen hundred and thirty-five in all matters of form, faith, government, worship, and discipline, except as the same are altered, changed, or affected by the republican nature of our institutions, as is stated in this bill.

39. Whether the Synod of the said Associate Reformed Presbyterian Church has not declared its attachment to and connection with the Church of Scotland, as is expressed in the words quoted in this bill.

40. Whether the said congregation in said deed mentioned was not established about the year seventeen hundred and twenty-seven under the pastoral care of the Reverend John Moorhead, as is stated in this bill.

41. And whether said John Moorhead was not a Presbyterian minister of the school known as the Scotch Presbyterian, as is stated in this bill.

42. And whether he was not previously a member of the Presbytery of Edinburg, or of some Presbytery in Scotland, and then a member of the Presbytery at Eastward, as is stated in this bill.

43. Whether the said congregation was not under his care for about forty-six years, to wit, from about the year seventeen hundred twenty-seven to the year seventeen hundred seventy-three, as a Scotch Presbyterian society, as is stated in this bill.

44. And whether the said Moorhead did not decease about the year seventeen hundred seventy-three, as is stated in this bill.

45. Whether the said church and congregation was not without a pastor, except for occasional services, as is stated in this bill.

46. Whether the said Robert Annan was not installed in the ministry of said congregation in the year seventeen hundred and eighty-three, and did not continue in the said ministry till the year seventeen hundred eighty-six, as is stated in this bill.

47. And whether he did not then remove from this Commonwealth, as is stated in this bill.

48. Whether the said Annan was or was not a minister of the faith of the Church of Scotland, and a member of the Presbytery of New York, subordinate to the Associate Reformed Synod of New York, and also a member of the Associate Reformed Presbyterian Church of North America, as is stated in this bill.

49. Whether the said Presbytery of Boston was not formed by the said Moorhead and others, as is stated in this bill, about the year seventeen hundred forty-five, and whether the said Moorhead was not an influential member of the same, as is stated in this bill.

50. Whether the said church or society in Long Lane did not continue for many years, to wit, until about the year seventeen hundred [eighty-two,] in fellowship with the said Presbitery of Boston, as is stated in this bill.

Amendment: Erases "eighty-two," and substitutes "74."

51. And whether the said society did not withdraw from the same, and about the year seventeen hundred eighty-two join the said Presbytery and Synod of New York, as is stated in this bill.

52. And whether it did not ever after continue to be legally connected with the Synod and Presbytery of New York, as is stated in this bill.

53. Whether the said Presbytery of Boston, in the year seventeen hundred seventy, did not consist of twelve congregations, of which that in Long Lane was one, as is stated in this bill.

54. Whether the said twelve congregations did not subseqently form themselves into three Presbyteries, and about the year seventeen hundred and seventy-six were all joined in one body, called the Synod of New England, as is stated in this bill.

55. Whether the said Synod of New England was not dissolved in the year seventeen hundred and eighty-two, and whether the said society in Long Lane did not then become connected with the Synod and Presbytery of New York, and whether it did not ever afterwards continue to be associated therewith, as is stated in this bill.

56. Whether the said changes and memberships in this bill mentioned in anywise affected the relations of the said church or society in Long Lane in matters of faith, government, worship, or discipline, with the Church of Scotland, or the Associate Reformed Presbyterian Church of this country.

57. Whether the said Robert Annan was not legally called from the Presbytery of New York in the year seventeen hundred and eighty-three to the pastoral charge of said church and society in Long Lane by a vote and request of said church and society addressed to said Presbytery, as is stated in this bill.

58. Whether the said Robert Annan was not a member of the Presbytery of New York in the year seventeen hundred eighty-three, as is stated in this bill.

59. Whether upon the said vote and request last mentioned certain measures were taken and had by and between the said church and society in Long Lane, the said Presbytery and the said Annan, by which the said relation of dependence and control between the said church and society, and the said Presbytery, was recognised, acknowledged, and asserted, as is stated in this bill.

60. Whether the said Robert Annan was not installed in the ministry over said church and society in Long Lane by the said Presbytery of New York in the year seventeen hundred eighty-three, as is stated in this bill.

61. And whether he was not duly removed from the said minis-

try over said church and society at his own request by said Presbytery in the year seventeen hundred eighty-six, as is stated in this bill.

62. Whether the said Annan was not at the time of his said removal, and until his decease, many years afterwards, a member of the said Synod, as is stated in this bill.

63. Whether the said Presbytery and Synod of New York have ever relinquished or discharged their claim or right to control, govern, and direct the said church and society in Long Lane, as in the time of the said Annan, as is stated in this bill.

64. And whether they do not continue to this day to claim a right to exercise the same, as is stated in this bill.

65. Whether the said First Associate Reformed Presbyterian Church and Society of Boston was not duly organized by the said Presbytery of New York as a religious society, after the [Scottish] Presbyterian order, in the year eighteen hundred and forty-six, as members of, connected with, and under the jurisdiction of the Presbytery and Synod of New York, as is stated in this bill.

Amendment.

66. And whether the said church and society does not consist of about one hundred and thirty communicants of said church, and about three hundred adult members of said society, as is stated in this bill.

67. Whether the said Presbytery and Synod is not a religious body, duly established, having full supervisory power in ecclesiastical matters over all the churches connected with it, and especially over the church and society here present as relators, as is stated in this bill.

68. And whether the said Presbytery and Synod did not, previous to the year seventeen hundred eighty-six, exercise the same power of supervision and control over the said society in Long Lane, as is stated in this bill.

69. Whether the Reverend Alexander Blaikie is not now minister of the said First Associate Reformed Presbyterian Church and Society of Boston; and whether he is not now, and was not for many years, previous to the year eighteen hundred and forty-six, a member of the said Presbytery Synod of New York, as is stated in this bill.

70. Whether he was not installed in his said ministry by the said Presbytery of New York, and whether he has not continued such minister ever since, as is stated in this bill.

71. Whether the said First Associate Reformed Presbyterian Church and Society do not now profess and teach, and have not always professed and taught the same faith, and conformed to the same discipline as did the said society in Long Lane mentioned in the deed of John Little, as is stated in this bill.

72. Whether in the year seventeen hundred eighty-six a

majority of the said congregation in Long Lane did not resolve themselves into a church and society different from a Presbyterian church and society, and different from a society belonging to the Church of Scotland, and different from the said church and society as it existed in the year seventeen hundred and thirty-five, and under the ministrations of the said Moorhead and the said Annan, as is stated in this bill.

73. And whether it has not ever since, with various changes of faith and discipline, continued to be a church and society other than a [Scottish] Presbyterian church and society, and other than the said church and society as it existed previous to the year seventeen hundred eighty-six, as is stated in this bill.

Amendment.

74. Whether in the year seventeen hundred eighty-six a minority of the said congregation did not object to the said change, and desire to be and remain in and under the Presbyterian form of worship as it existed in the year seventeen hundred and thirty-five, as is stated in this bill.

75. And whether the said minority was not overborne and obliged to submit to the wrong and injury done by the said majority, as is stated in this bill.

76. Whether by the said change the said trust so established by the said John Little [and by the said John Little, George Glen, and others, and by said deed] was not wholly perverted, abused, and misapplied, as is stated in this bill.

Amendment.

77. Whether the said Reverend Jeremy Belknap was not ordained about the year seventeen hundred eighty-seven, and at what particular time, as minister and pastor of the said church and society, as is stated in this bill.

78. And whether the said Belknap was a Congregational minister or a Presbyterian minister after the order of the Church of Scotland.

79. Whether he was a minister of the faith and discipline of the said John Little, [and of the said Glen and others, and of the said congregation] and of the said Moorhead and the said Annan.

Amendment.

80. Whether he was a member of any Presbytery of the Associate Reformed Presbyterian Church of North America.

81. Whether he was installed over the said church and society by a Congregational form of installation, or by the Presbyterian form.

82. Whether he was installed as aforesaid by the Presbytery of New York, or by any Presbytery; and whether the said Presbytery of New York, with the minority of the said congregation, did not object to his said installation.

83. And whether the said Presbytery consented thereto.

84. Whether the said Reverend Jeremy Belknap, and the said

church and society, did not introduce forms of worship, and rules of discipline, and opinions of belief, different from those practised and believed under the said Moorhead and Annan, and contrary to the intent of the deed of John Little, as is stated in this bill.

85. And in what the said changes and subversions, if any, introduced by and under the said Jeremy Belknap, consisted, and whether they were not in part, as is stated in this bill.

86. Whether the said meeting-house and lands in Long Lane did not continue for a long time thereafter, and for how long a time, to be occupied by an Orthodox Trinitarian Congregational society, and not by a [Scottish] Presbyterian society, as is stated in this bill.

Amendment.

87. Whether the said church and society did not thereafter, about the year eighteen hundred fifteen, and at what time, again change its form of faith and discipline, and become an Unitarian society, as is stated in this bill.

88. And whether it has not ever since continued such Unitarian society, as is stated in this bill.

89. Whether the said last mentioned change was not a perversion and abuse of the trust so created by the said John Little [and by the said John Little, George Glen, and others, and by the said deed,] for the reasons set forth in this bill.

Amendment.

90. Whether the discipline and worship of the said Unitarian society are in any respect different from those of the Church of Scotland, or of the Associate Reformed Presbyterian Church of North America; and if so, in what respects.

91. Whether the discipline and worship of the said Unitarian society is different from those observed and enforced in the said church in Long Lane in the year seventeen hundred thirty-five, and as they were practised, obeyed, and conformed to by the said John Little, [by the said Glen and others, and by the said congregation;] and in what respects, if any, the same is different.

Amendment.

92. Whether the forms of faith of the said Unitarian Church and society are different from those believed by the said church and society in the year seventeen hundred thirty-five; and if so, wherein they differ.

93. And whether they are the same as those professed by the said John Little, [and by the said Glen and others, and by the said congregation,] and preached by the said Moorhead in the year seventeen hundred thirty-five; and if not, wherein they differ.

Amendment.

94. Whether the forms of faith believed and taught in the said society at this time are those known as Calvinistic Trinitarianism.

95. Whether the said society believes and teaches the doctrine of the Trinity, the divinity of the Son of God, the atonement,

original sin, predestination, particular election, and spiritual regeneration by the Holy Ghost.

96. And whether it believes and teaches the doctrines taught in the Westminster Catechisms.

97. Whether there was any class of Christians in this community or in this Commonwealth, or in any of the colonies of Great Britain, or anywhere in the realm of Great Britain, or in the Kingdom of Scotland, known as Unitarians, in the year seventeen hundred thirty-five.

98. And whether any such could exist in this colony or Commonwealth in the year seventeen hundred thirty-five, under the laws of Great Britain.

99. And whether any other doctrines of Christian belief were recognised or professed, or tolerated in this Commonwealth, in the year seventeen hundred thirty-five, except Orthodox Trinitarianism.

100. And whether Unitarianism was recognised or professed, or tolerated at that time, in this Commonwealth.

101. Whether the said land and meeting-house in said deed of John Little mentioned are now held and enjoyed by the said Unitarian society, these defendants, by the same tenures and in the same manner as those by which the Church of Scotland held and enjoyed the lands whereon the meeting-houses were erected in the year seventeen hundred thirty-five.

102. Whether the said John W. Emery is not now, and has not been for a long time a pew-holder in the meeting-house now in the possession of the defendants.

103. And whether the said Emery is not desirous that the said meeting-house should be given up and restored to the occupation of a church and society similar to that existing in the premises in the year seventeen hundred thirty-five, as is stated in this bill.

104. And whether the said Emery does not desire that the occupation and possession of the premises now held by these defendants should be decreed by this honorable court to belong to the said First Associate Reformed Presbyterian Church and Society of Boston, as is stated in this bill.

105. Whether the street called in the said deed of John Little, "Long Lane," is not now known as Federal street, and the said street called "Bury street," in said deed, is not now known as "Channing street," in said Boston, as is stated in said bill.

106. And whether the premises conveyed by John Little, and herein mentioned, are not those known as the meeting-house formerly called Dr. Channing's church, and now occupied by the Unitarian church and society worshipping under the pastoral care of the Reverend Ezra Stiles Gannett, D. D., in said Federal street and said Channing street, with the lands now in the occupation and possession of the said Unitarian society, as is stated in this bill.

107. And whether the said church and society is not now a corporation duly established by the laws of this Commonwealth, as is stated in this bill.

108. Whether the said demand for the said premises was not made, as is stated in this bill.

109. And whether the said refusal was not made, as is stated in this bill.

110. Whether the said defendants have not in their possession certain books of record of the actings and doings of the said church and society in Long Lane, previous to the year seventeen hundred and eighty-six and since, as is stated in this bill.

111. And whether a demand for permission to examine said books was not made, as is stated in this bill.

112. And whether the refusal was not made, as is stated in this bill.

113. Whether the said defendants have not now, or had not lately, or at some time, and when last in their possession or power, divers or some, and what books of record, documents, vouchers, memoranda, papers or writings, which now are or were in their possession or control, distinguishing and stating particularly such of them as now are or have ever been in their possession or control; and that they may leave such of them as are in their said respective possession or power, in the hands of their clerk or clerks, or other officer, or in their own hands in court, for the inspection of this honorable court and for the usual purposes.

114. Whether the said premises mentioned in this bill are not of great value, and of what value.

115. And whether the annual rents and profits of the same are not of great value, and of what value, and from what sources they are derived.

116. And what is the annual value in the currency of the said rents and profits since the year 1844; and what is the sum of this gross value since the said year 1844 up to the present time.

Amendment. And that the said trust so created by the said John Little, [and so created by the said John Little, George Glen, and others, and by the said deed,] may be established, performed, and carried into execution, and that all proper directions may be given for that purpose.

And that an account may be taken of all sums of money received by, or by the order or for the use of them, the said defendants, the said corporation, for or in respect of the use, rent, or occupation of the said premises, since the said year eighteen hundred and forty-four; and that what shall be found due upon the taking of said account, may be applied and disposed of in such manner as this honorable court shall direct. And that the said defendants may be removed from being the trustees of said trust and charity; and that new trustees thereof may be appointed by

and under the direction and decree of this honorable court. And that the said defendants may deliver over to said new trustees all deeds, records, papers, and writings in their custody or control relating thereto.

And that such further and other relief may be decreed in the premises, as under the circumstances herein before particularly mentioned to your honors shall meet, and the nature of the case may require.

May it please your honors to grant unto your orator a writ of subpœna of this Commonwealth, to be directed to the said defendant corporation, thereby directing them at a certain day, and under a certain pain therein to be specified, personally to be and appear before your honors in this honorable court, and then and there to answer all and singular the premises, and particularly to show by what warrant they pretend to hold and enjoy the premises herein described, and the privileges thereto belonging, and to stand to, perform, and abide such order and decree therein, as to your honors shall seem meet. And your orator shall ever pray.

JOHN H. CLIFFORD,
*Attorney General.*

RUFUS CHOATE, *of Counsel.*
JOHN C. ADAMS, *Solicitor.*

This information was filed in the clerk's office of said supreme judicial court on the third day of December, A. D. eighteen hundred and fifty, and thereupon a subpœna issued in the words following, to wit:

Commonwealth of Massachusetts.

[SEAL.] SUFFOLK, *ss.*

To the Proprietors of the Meeting-house in Federal street, in the town of Boston, greeting:

We command you that you appear before the clerk of our supreme judicial court, at the rules, to be holden at his office in Boston, within our said county of Suffolk, on the first Monday of January next, then and there to answer to a bill of complaint exhibited against you in our said court by John Henry Clifford, esquire, Attorney General of the Commonwealth, by and at the relation of the First Associate Reformed Presbyterian Church and Society of Boston, the Reverend Alexander Blaikie, pastor of the said church and society, Edward M. Stuart, John Taylor, William Elder, and Samuel Gwynn, ruling elders of said church and society, and the prudential committee for managing the temporal affairs of said society, and John W. Emery, of said Boston, relators.

Hereof fail not, under the pains and penalties in the law in that behalf provided.

Witness Lemuel Shaw, esquire, chief justice of said supreme judicial court, at Boston, the third day of December, in the year of our Lord one thousand eight hundred and fifty.

GEO. C. WILDE, *Clerk.*

On which a deputy of the sheriff of said county of Suffolk made return as follows, to wit:

SUFFOLK, *ss.* Boston, December 3d, 1850.

I this day summoned the within named "Proprietors of the Meeting-house in Federal street, in the town of Boston," to appear at the time and place within appointed, by giving attested copies of this subpœna in hand to Samuel E. Guild, esq., treasurer, and Elisha Bassett, esq., clerk of said proprietors.

WATSON FREEMAN,
*Deputy Sheriff.*

Fees, service, copy, &c., $1 34.

And said information was entered upon the docket of said supreme judicial court at the November term thereof in said year, when and where the parties appeared, and the same was continued unto the March term, A. D. eighteen hundred and fifty-one, when the defendants filed their answer, as follows, to wit:

Commonwealth of Massachusetts.

COUNTY OF SUFFOLK, *ss.*

Supreme Judicial Court—In Equity.

John H. Clifford, esquire, Attorney General, &c., at the relation of the Associate Reformed Presbyterian Synod of New York and others informant, and the Proprietors of the Meeting-house in Federal street, in the town of Boston, defendants.

*Defendants' Answer.*

These defendants, reserving to themselves all just exceptions to said bill, for answer thereto, or to such parts thereof as these defendants are advised are material or necessary for them to make answer to, say that they were made into a corporation by an act of the legislature of Massachusetts, passed on the 15th day of June, 1805, and that under the said act they are the true and sole owners of the premises occupied by them and demanded in the bill, and that the said act was passed upon the application and petition of parties who prior thereto, as owners of pews, were tenants in common of the land and house thereon. And the said charter was accepted, and by virtue thereof these defendants have ever since been in open, exclusive, and undisputed possession of the said premises, and have exercised all the acts and rights of ownership thereto, have expended large sums of money in betterments and improvements, and especially in the erection of a new building for

public worship, and these defendants submit that this open, exclusive, and undisputed possession of the said premises for the space of nearly fifty years should operate by way of confirmation and assurance to their title, even if the same had been originally defective, which they deny; and they will rely upon this open, exclusive, and undisturbed possession, and upon their legal rights flowing from the same, and upon the statutes of the Commonwealth limiting actions, by way of bar to the plaintiffs' claim, as fully as if the same had been specially pleaded.

And these defendants, further answering, admit that the said Henry Deering, on the 14th day of May, A. D. 1729, did make a conveyance to the said John Little, of Boston, gardener, as set forth in the said bill, and that the nominal consideration of the said deed and the premises conveyed are rightly set forth in the said bill, but that the true consideration of said deed is hereinafter set forth.

And these defendants, further answering, admit the conveyance from the said John Little to the said George Glen, William Hall, William Shaw, and Andrew Knox, set forth in the said bill, and that the copy of the said conveyance appended to the said bill is a true and correct copy thereof, but they wholly deny that the said deed created a charitable estate for the support, encouragement, advancement, and perpetuity of the Christian religion according to the form of worship and discipline known as the Scotch Presbyterian worship, government, discipline and belief, or that any charitable use whatever was created thereby, or sprung therefrom, or that the said conveyance was so accepted by the said George Glen, William Hall, William Shaw, and Andrew Knox; and they deny that the said conveyance of the said meeting-house and land from the said John Little was in any sense a gift, or that it was coupled with any immutable condition, or that it was the intention of the said Little to restrict the use and occupation of the said meeting-house and land to a congregation worshipping after the form and governed by the discipline of the Scotch Presbyterian church, and none other, or that he had any right to make any such restriction or limitation whatever.

And these defendants, further answering, say, that prior to the 9th day of April, 1735, certain persons associated together in the town of Boston to erect a place of public worship for their own use, of whom the said John Little was one, and that the said Little acted as the agent of the said persons to procure a piece of land and erect a place of public worship thereon; that the cost of the land and of the building, as it went on, was defrayed by contributions or assessments levied by the said persons upon themselves, which were paid into the hands of the said Little, to be by him expended for the common benefit of them and him; that in the course of time a controversy arose between the said parties, com-

posing the said congregation, on the one hand, and the said Little, as their agent, on the other, and that the said controversies were referred to the arbitration and award of three persons, Jacob Sheafe, Stephen Boutineau and Hugh Vans, and that these referees made their award, a copy of which is hereto annexed, under date of April 9th, 1735, and they awarded that George Glen, William Hall, William Shaw and Andrew Knox, a committee of the associates, should, within two months from the date of the award, pay or cause to be paid to the said Little the sum of one hundred and forty pounds and five pence, in full for all demands and claims for his services and disbursements on their behalf, and also touching his purchase of the land from Deering as aforesaid; and the said arbitrators further awarded, that upon payment of the said sum of money, the said little should convey unto the said congregation or association the land which, as their agent, he had previously bought of the said Deering, "to hold the same to the said congregation according to the tenures, and after the same manner as the church of Scotland hold and enjoy the lands whereon their meeting-houses are erected."

And the said arbitrators further awarded, that the right and interest of the said John Little in the said meeting-house should be confined to the pew and seat then in his possession, which was to remain good to him forever in the same manner as the rest of the proprietors in the said meeting-house do hold and enjoy their respective rights and interests therein.

And the said arbitrators further awarded, that the said John Little shall assign to the said George Glen, William Hall, William Shaw and Andrew Knox, "as they are a committee chosen and appointed by the said congregation for managing the prudential affairs thereof," all the outstanding debts due to the said congregation.

And these defendants, further answering, say that the said John Little, in pursuance of the said award, did make and execute a conveyance to the said George Glen, William Hall, William Shaw and Andrew Knox, in their capacity of prudential committee of said congregation, and to their successors in that office, but to and for the only proper use, benefit, and behoof of the said congregation, (according to the tenures and after the same manner as the Church of Scotland hold and enjoy the lands whereon the meeting-houses are erected.)

And these defendants further say, that the object and purport of the above clause was not to couple the conveyance with a condition, which the said Little had no right to do, but to make patent, and put on record the then use for which the conveyance was made and accepted, and to give greater assurance to the title, which had become the more requisite by reason of the controversy before mentioned, and that the proper legal construction of the said clause is,

that the said conveyance was taken by the said grantees in trust for a religious congregation, who were, at that time, moved to worship God under the forms of the Presbyterian church, and that the said grantees became trustees and seized of the legal title, but that the beneficial interest was in the pew-holders or cestuis que trust, and that the said trustees had no other substantial interest or benefit than such as was derived from the fact of their being pew-holders; and that the said land and building were then purchased, acquired, owned, and held as their private property, over which they had and held absolute dominion, and full power to change the use to which the same should or might, from time to time, be appropriated.

And these defendants further say, that under this conveyance the trustees and cestuis que trust continued to use and enjoy the said premises, using the form of worship and church government mentioned in the deed, but that the entire interest, property, and control in the said land and meeting-house was vested in the said trustees and cestuis que trust, being pew-holders, as tenants in common; that the title to each pew was a conveyance from the prudential committee; that the proprietor of each pew had the right to sell and dispose of the same like any other property, subject only to the condition of offering the same to the said prudential committee at its appraised value; that when any vacancy occurred in the members of the prudential committee the pew-holders chose a person from their own number to supply the said vacancy, and such the defendants say has been substantially the case until the present time.

And these defendants, further answering, say that they know not and are not informed, of the tenure of the lands held by the church of Scotland in 1735, nor whether if a congregation, parish, or society of the said church ceased to be Presbyterian in any respect, whether in faith, form of worship, and discipline, it ceased to hold and enjoy the lands on which their meeting-house was erected, nor whether the same passed under the control of the general assembly of the Church of Scotland, to be used by some other Presbyterian society, nor whether any Unitarian society in the year 1735 could not hold lands under the Church of Scotland, nor whether in the same year a religious society belonging to the Church of Scotland, subsequently becoming Unitarian, could not hold the lands formerly belonging to it as a Church of Scotland, nor whether by such change of faith or government the land held by said church ceased to be their property, and reverted to the general assembly as set forth in the said bill, and they pray that on all these points the plaintiffs be required to make due and legal proof thereof, so far as the same may be material to this inquiry.

And these defendants, further answering, say, that if the facts and principles set forth in the bill in regard to the tenure of the

lands held by the Presbyterian congregations in Scotland in 1735 should be proved to be true, they do not support the claims set up by the said bill, because they flow from the fact that the Presbyterian is the established religion of that part of Great Britain called Scotland, and as such, recognised by law and clothed with peculiar privileges, and that Presbyterianism has never been the established religion in Massachusetts, and was not in the year 1735, and that no form of faith or church government has ever been set up by law in this Commonwealth, as superior to others, but that the people of this Commonwealth have, from the first settlement thereof, been allowed to worship God according to the dictates of their own consciences, and that neither the Parliament of Great Britain, so long as Massachusetts continued to be a colony, nor the legislature of Massachusetts, since it became an independent sovereign State, have ever undertaken to confer any especial privileges upon the Presbyterian Church, or to create or uphold a State or established religion, but the same always has been opposed to the principles which led to the settlement of this Commonwealth, to the deep-seated convictions of its people at all times, and to the essence and spirit of the republican institutions under which we live.

And these defendants, further answering, admit that they are informed, and verily believe, that the Church of Scotland, in the year 1735, was a Presbyterian church, as stated in said bill, and that it was a Calvinistic Trinitarian church, holding and teaching "the confession of faith, and the catechisms known as the Larger and Shorter Westminster catechisms, the directories, form of church government, discipline, then of public authority in the Church of Scotland;" and that the said church was in no respects an Unitarian church, but was in many respects opposed in matters of faith and dicipline to an Unitarian church or society; and that it was opposed to the faith and discipline of the Unitarian society occupying the premises mentioned in the said bill, as stated in the said bill.

And these defendants, further answering, say that they are instructed, and verily believe that the essential part of Presbyterianism, so called, consists in its external form, and not in its inward faith and spirit; that Presbyterianism is a species of church government by presbyters or elders, being of co-equal authority, and rejecting the government of prelates or bishops, and that such form of church is not inconsistent with any of the creeds, opinions, or doctrines known to the Christian world, and that in that part of Great Britain called England, there are Presbyterian congregations opposed in matters of faith and discipline to the Church of Scotland, and especially opposed to the doctrines commonly called Calvinistic.

And these defendants, further answering, say that they are not informed and do not know whether the said society in Long Lane, in the years 1730 and 1735, professed, taught, and conformed to the faith, discipline, and government of the Church of Scotland, as set forth in the said bill, and pray that the plaintiffs be required to make due and legal proof thereof, so far as the same may be material to this inquiry.

And these defendants do not admit, but expressly deny, that the said society continued to be a church after the form and pattern of the Church of Scotland, so far as the same were adapted to the civil government under which the said society was placed, from the year 1730 down to the year 1786, or that it was in matters of religious faith, worship, government, and discipline, in all respects like and precisely similar to the Church of Scotland, as stated in the said bill; but, on the contrary, they affirm that many years before the said last mentioned date, but the exact period these respondents cannot set forth by reason of the lapse of time and the incompleteness of their records, the said congregation withdrew from all communion or connection with any presbytery whatever, and so remained a solitary and independent congregation for a long space of time; and they deny that the said congregation in Long Lane was in all respects a Presbyterian congregation, after the manner and constitution of the Church of Scotland, with the same forms of worship, faith, and discipline, but, on the contrary, maintain that the pewholders had the exclusive interest in and control over the premises and meeting-house occupied by them; that they or a majority of them had at all times the right to withdraw from the Presbyterian denomination; and that they did, in point of fact, exercise such right many years before 1782, and erected themselves into a separate and independent religious community, and in that condition remained many years without molestation, hindrance, or inquiry.

And these defendants, further answering, say that they are not informed, and do not know, and cannot state, whether a principal and prominent part of the faith professed by the said church and society in Long Lane consisted in the belief of the divinity of Jesus Christ and in the Trinity of the Deity or Godhead, in the doctrine of original sin, of the atonement, of predestination, of particular election, and of spiritual regeneration by the Holy Ghost, and of the doctrines contained in the Larger and Shorter Westminster catechisms, as stated in the said bill; nor can they state in what the faith of the said church and society did consist; and they pray that the plaintiffs be required to make due and legal proof thereof, so far as the same may be material to this inquiry. But these defendants admit that the said matters of faith and belief are inconsistent with and opposed to the faith and belief called and known

as Unitarianism, nor held, professed, and taught by the society now occupying the premises claimed in the bill.

And these defendants, further answering, say that they are informed and verily believe, that the said John Little was a member of the said church and society in Long Lane, and one of the pewholders thereof, but whether he was attached from his youth to the Scotch Presbyterian Church, or whether he was a communicant of the said church, or whether he professed the Calvinistic Trinitarian faith, as set forth in the bill, or what his faith was, or whether he was a Presbyterian, a Congregationalist, or an Unitarian, they are not informed and do not know; and these defendants submit, that the religious opinions of the said John Little are in no way material in this inquiry, and can in no way affect the rights of these respondents, for the reasons herein before set forth; but they pray that the plaintiffs be required to make due and legal proof thereof, so far as the same may be material to this inquiry.

And these defendants deny that the said John Little did establish, or intended to establish, or had any right to establish, any trust for the perpetual, unchangeable use and benefit of either a Presbyterian or Trinitarian society, or of a Congregational and Unitarian society, but that the use created by his said deed was a trust for the use and behoof of such persons as then were or might thereafter be pewholders in said meeting-house, whether they were Presbyterians, Congregationalists, or Unitarians, such pewholders being, in point of fact, at the time of such conveyance attached to the Presbyterian mode of church government and discipline, such conveyance expressing their then preference for that form of worship and discipline; and they further deny that the said John Little, or any other person, did make any charitable gift, or that any public charity whatever was created or provided for; and they submit, that even if any particular use was unchangeably impressed upon the said property, which they expressly deny, yet such use was in favor of and beneficially to be enjoyed by the owners of pews in the meeting-house, and was in the nature of a trust for those certain and particular persons, and so was not and could not be a public charity; nor has this honorable court, on the information and bill aforesaid, any jurisdiction over the same.

And these defendants admit that they are informed and verily believe, that a Presbyterian church differs in many important points of government and discipline from a Congregational church, but they are not informed, and do not know, that there is any essential or necessary difference in the mode of worship.

And these defendants, further answering, say that they are not informed and cannot say whether a material part of the form of worship in the said Church of Scotland is the use of Rouse's version of the Psalms, as stated in the bill; nor whether the said version, and no other, was used in all the Presbyterian churches of

Scotland in the year 1735; nor whether it is the only one now used by the Church of Scotland; nor whether it was the only one used in the said church in Long Lane at the establishment of the same, and down to the year 1786; nor whether it is the only one now used or ever used by the Associate Reformed Presbyterian Church in this country, nor by the churches or societies connected with said church; nor whether it is the only one ever used by the church and society named in the bill as relators; nor whether it is the only one used by Presbyterian societies of Scottish origin in this country. And these defendants pray that the plaintiffs be required to make due and legal proof thereof so far as the same may be material to this inquiry.

And these defendants say that they are not informed and do not know whether the said confession of faith, catechisms, directories, forms of church government, discipline, &c., which were of public authority in the Church of Scotland in the years 1725, 1730, 1783 and 1786, so far as they are or were adapted to the civil government of the said church and society in Long Lane at the periods above mentioned, were identical with the confession of faith, catechisms, directories, forms of church government and discipline known as the constitution and standards of the Associate Reformed Presbyterian Church in America, as stated in the bill, nor do they know in what respects, if any, they differ, and they pray that the plaintiffs be required to make due and legal proof thereof, so far as the same may be material to this inquiry.

And these defendants, further answering, say that they do not know and are not informed whether the same constitution and standards last mentioned have been always the rule of Presbyterian societies of Scotch origin in this country, nor whether the same are now and have always been professed, taught, and conformed to by the Presbytery of New York under the Associate Reformed Synod of New York and by the First Associate Reformed Presbyterian Church and Society of Boston, named in the bill as relators, nor whether the church known as the Associate Reformed Presbyterian Church of North America is, in all material matters, the same as the ancient Church of Scotland, nor whether the said association was formed in the year 1782, nor whether it comprises a large majority of the churches in this country professing the faith of the Church of Scotland as it existed in the year 1735, in all matters of form, faith, government and discipline, except as the same are affected by the republican nature of our institutions, nor whether the Synod of the said Associate Reformed Presbyterian Church has declared its attachment to and connection with the Church of Scotland; and these defendants pray that the plaintiffs be required to make due and legal proof thereof, so far as the same may be material to this inquiry.

And these defendants, further answering, say that they are informed and believe that the said congregation mentioned in the said deed of John Little was established about the year 1727, under the pastoral care of the Rev. John Moorhead, a Presbyterian minister of the school known as the Scotch Presbyterian, but they are not informed and do not know whether the said Moorhead was previously a member of the Presbytery of Edinburgh or of some Presbytery in Scotland, or whether he was afterwards a member of the Presbytery at the Eastward, and they pray that the plaintiffs be required to make due and legal proof thereof, so far as the same may be material to this inquiry.

And these defendants, further answering, say that they are informed and believe that the congregation was under the care of the said Moorhead for about forty-six years, to wit: from about the year 1727 to the year 1773, and that the said society was a Presbyterian society; but whether or not it was after the manner of the Church of Scotland, these defendants are not informed and know not, and pray that the plaintiffs be required to make due and legal proof thereof, so far as the same may be material to this inquiry.

And these defendants, further answering, say that they are informed and believe that the said Moorhead deceased about the year 1773, and that there was a period of about ten years during which the said church and congregation were without a pastor, except for occasional services; but they deny that the said services were supplied by direction of the Presbytery of Boston, or that the said church and congregation existed under the authority of the said Presbytery, but, on the contrary, they are informed and believe that during said period the said society was disconnected with any Presbytery whatever, and acted as an independent congregation in all respects, especially in the choice of pastors, by whom occasional services were supplied to them.

And these defendants, further answering, say that they are informed and believe that the said Robert Annan was installed in the ministry of the said congregation in the year 1783, and did continue in the ministry till the year 1786, and that he then removed from the Commonwealth; but these defendants do not know and are not informed whether the said Annan was a minister of the faith of the Church of Scotland or a member of the Presbytery of New York, subordinate to the Associate Reformed Synod of New York, or a member of the Associate Reformed Presbyterian Church of North America, and they pray that the plaintiffs be required to make due and legal proof thereof, so far as the same may be material to this inquiry.

And these defendants further say, that they are not informed and do not know whether the said Presbytery of Boston was formed by the said Moorhead and others in the year 1745, nor whether

the said Moorhead was an influential member of the same, and they pray that the plaintiffs be required to make due and legal proof thereof, so far as the same may be material to this inquiry.

And these defendants further say, that they do not admit, but deny that the said church and society in Long Lane continued until about the year 1782 in fellowship with the said Presbytery of Boston or any Presbytery; but, on the contrary, they aver, that before that date the said society and congregation had withdrawn for some years from all association with any Presbytery whatever, as hereinbefore stated.

And these defendants, further answering, say that they do not know and are not informed whether the said church and society in Long Lane, in the year 1782, withdrew from the said Presbytery of Boston; and they are not informed and do not know whether the said society formally and legally joined the Presbytery and Synod of New York, and they deny that it ever after continued to be legally connected therewith.

And these defendants, further answering, say that they are not informed and do not know whether the said Presbytery of Boston in the year 1770 consisted of twelve congregations, or whether that of the Rev. John Moorhead in Long Lane was one; nor whether the said twelve congregations did not subsequently form themselves into three Presbyteries; nor whether about the year 1776 they were all joined in one body, called the Synod of New England; nor whether the said Synod of New England was not dissolved in 1782; nor whether the said church and society in Long Lane then became connected with the Presbytery and Synod of New York; and they pray that the plaintiffs be required to make due and legal proof thereof, so far as the same may be material to this inquiry; and these defendants do not admit but deny that said church and society ever afterwards continued to be associated with the said Presbytery and Synod of New York.

And these defendants, further answering, say that they know not, and are not informed, whether the changes and memberships mentioned in the bill affected the relations of the church and society in Long Lane in matters of faith, government, worship, or discipline with the Church of Scotland, or with the Associate Reformed Presbyterian Church of this country; and they pray that the plaintiffs be required to make due and legal proof of the same, so far as it may be material to this inquiry.

And these defendants, further answering, say that they do not know and are not informed whether the said Robert Annan was legally called from the Presbytery of New York in the year 1783 to the pastoral charge of said church and society in Long Lane by a vote and request of said society addressed to said Presbytery; but they admit that it appears by the records of said society that a letter dated September 11th, 1782, was addressed by W. M'Neill,

Andrew Black, Robert Weir, Hector M'Neill, and Simon Elliot, a committee of said society, to the Associate Presbytery of New York, asking their aid in the settlement of the said Annan, wherein it was stated that they had for several years then past stood single and unconnected with any of the Presbyteries of this country, and a desire was expressed to be united with the said Presbytery, because the said Annan desired to continue his connection therewith; to which letter, or an attested copy thereof, herewith to be produced, they beg leave to refer this honorable court.

And these defendants, further answering, say that they do not know and are not informed whether the said Annan was a member of said Presbytery of New York in the year 1783; and pray that the plaintiffs be required to make due and legal proof thereof, so far as the same may be material to this inquiry.

And these defendants, further answering, say that they do not know and are not informed whether and, if any, what measures were taken and had by and between the said society in Long Lane, the said Presbytery, and the said Annan, by which the relation of dependence and control between the said church and society and the said Presbytery was recognised, acknowledged, and asserted; and they pray that the plaintiffs be required to make due and legal proof thereof, so far as the same may be material to this inquiry.

And these defendants, further answering, say that they admit that the said Annan was installed in the ministry in the year 1783, but they are not informed and know not whether by the said Presbytery of New York; and pray that the said plaintiffs be required to make due and legal proof thereof, so far as the same may be material to this inquiry.

And these defendants, further answering, say that they admit that the said Annan was removed from the said ministry over said church and society in the year 1783, at his own request, but they are not informed and do not know whether the said removal was by the said Presbytery of New York; and they further say that they are informed and verily believe that the said removal of the said Annan grew out of mutual dissatisfaction of himself and his people, founded upon a difference of opinion in matters of church government and discipline, the said Annan being a rigid Presbyterian, and the said congregation, or a majority of them, being disinclined to that form of church government and discipline.

And these defendants, further answering, say that they are not informed and know not whether the said Annan was at the time of his removal, and until his decease, many years afterwards, a member of the said Synod of New York; and they pray that the plaintiffs be required to make due and legal proof thereof, so far as the same may be material to this inquiry.

And these defendants, further answering, say that they are not

informed and do not know whether the said Presbytery and Synod of New York have ever relinquished or discharged their claim or right to control, govern, and direct the said church and society in Long Lane as in the time of the said Annan, or whether they continue to this day to claim a right to exercise the same; and pray that the plaintiffs be required to make due and legal proof thereof, so far as the same may be material to this inquiry.

And these defendants, further answering, say that they know not and are not informed whether the said First Associate Reformed Presbyterian Church and Society of Boston was duly organized by the said Presbytery of New York as a religious society after the Presbyterian order in the year 1846, connected with and under the jurisdiction of the Presbytery and Synod of New York; nor whether the said church and society consists of about one hundred and thirty communicants of said church, and about three hundred adult members of said church; nor whether the said Presbytery and Synod is not a religious body, duly established, having full supervisory power in ecclesiastical matters over all the churches connected with it, and especially over the church and society named in the bill as relators; nor whether the said Presbytery and Synod did, previous to the year 1786, exercise the same power of supervision and control over the said society in Long Lane; nor whether the Rev. Alex. Blaikie is now minister of the said First Associate Reformed Presbyterian Church of Boston; nor whether he is or has been a member of the said Presbytery and Synod of New York; nor whether he was installed in his said ministry by the said Presbytery of New York; nor whether he has continued such minister ever since; nor whether the said First Associate Reformed Church and Society do now profess and teach, and have always professed and taught the same faith and conformed to the same discipline as did the society in Long Lane, mentioned in the deed of said Little; and they pray that the plaintiffs be required to make due and legal proof thereof, so far as the same may be material to this inquiry.

And these defendants, further answering, say that they are informed and believe that the proprietors of the meeting-house in Long Lane, in August, in the year 1786, did by an unanimous vote of all persons legally or equitably interested in the said land and meeting-house, embrace the Congregational mode of government, and resolve themselves into a church and society different from a Presbyterian church and society, and that the same has ever since continued to be so, but how far the same was and has been different from the said church and society, as it existed in the year 1735, and under the ministrations of the said Moorhead and Annan, these defendants are not informed, and do not know, and pray that the plaintiffs be required to make due and legal proof thereof, so far as the same may be material to this inquiry.

And these defendants, further answering, say that they are not

informed and do not know whether, in the year 1786, a minority of the said congregation objected to the said change, and desired to remain under the Presbyterian form of worship, nor whether the said minority were overborne and obliged to submit to any wrong and injury on the part of the majority, and they pray that the plaintiffs be required to make due and legal proof therof, so far as the same may be material to this inquiry.

And these defendants, further answering, say, that if by "congregation" as used in the said bill in this connexion is meant the body of worshippers as distinct from the pew-holders, a minority of the said congregation could not submit to any wrong or injury on the part of the majority, because the said congregation, as such, had no legal rights in the premises, but that the entire control of the meeting-house belonged to the pew-holders, and they had a right to change at any time their faith or mode of church government, and that the change from the Presbyterian to the Congregational mode of discipline, government, and worship was the unanimous act of the said pew-holders, and not merely of a majority thereof.

And these defendants deny that any trust was established by the said John Little; or that if there was any, that it was perverted, abused and misapplied by the said change.

And these defendants are informed, and verily believe, that on the 4th day April, in the year 1787, the said Rev. Jeremy Belknap was ordained as minister and pastor of the said church and society, and that he was a Congregational minister, and not a Presbyterian minister, and not a member of any Presbytery of the Associate Reformed Presbyterian Church of North America; but they know not whether he was a minister of the faith and discipline of the said Little, the said Moorhead, and the said Annan, and pray that the plaintiffs be required to make due and legal proof thereof, so far as the same may be material to this inquiry.

And these defendants are informed, and verily believe, that the said Belknap was installed over the said church and society by a Congregational form of installation, and not by a Presbyterian form, and that he was not installed by the Presbytery of New York, or by any Presbytery; but they are not informed, and do not know, whether the said Presbytery of New York, with the minority of said congregation, objected to the said installation, nor whether the said Presbytery consented thereto, and they pray that the plaintiffs be required to make due and legal proof thereof, so far as the same may be material to this inquiry.

And these defendants, further answering, say that they are not informed and do not know whether the said Rev. Jeremy Belknap and the said church and society introduced forms of worship and rules of discipline, and opinions of belief, different from those practised, taught and believed under the said Moorhead and Annan, and contrary to the intent of the deed of John Little, and they

pray that the plaintiffs be required to make due and legal proof thereof, so far as the same may be material to this inquiry; but they are informed and believe, that from and after the installation of the said Rev. Jeremy Belknap, the said society continued to be a Congregational society, and not a Presbyterian society; and they also are informed and believe that about the year , a collection of psalms and hymns compiled by the said Rev. Jeremy Belknap was introduced, adopted and used by the society, but they are not informed and do not know whether the said version of Rouse was used by the said society from the period of its foundation until the year 1786, and pray that the plaintiffs be required to make due and legal proof thereof, so far as the same may be material to this inquiry.

And these defendants, further answering, say that they admit that the said meeting-house and lands have continued from the date of the installation of the said Rev. Jeremy Belknap, until the present time, to be used and occupied by a Congregational society; and they are informed and believe, that after the date of the said installation, the opinions of the pew-holders and society underwent a gradual change, and they became an Unitarian society, and not an Orthodox and Trinitarian society, but at what particular time the said change took place, and whether or not it was in the year 1815, these defendants know not, and are not informed.

And these defendants admit that the said society is, and has been for many years past, an Unitarian society, but they deny that such change of faith was a perversion and abuse of the trust asserted to have been created by the said John Little, and they deny that any trust was created by the said John Little.

And these defendants, further answering, say that they know not, and are not informed, whether the discipline and worship of the said Unitarian society are different from those of the Church of Scotland, or of the Associate Reformed Presbyterian Church of North America, nor whether they are different from those observed and enforced in the said church in Long Lane in the year 1735, and as they were practised, obeyed and conformed unto by the said John Little, and they pray that the plaintiffs be required to make due and legal proof of the same, so far as it may be material to this inquiry.

And these defendants, further answering, say that they are not informed, and do not know, whether the forms of faith of the said Unitarian church and society are different from those believed by the said church and society in the year 1735, nor whether they differ from, nor whether they are the same as those professed by the said John Little, and preached by the said John Moorhead, in 1735, nor wherein they differ.

And these defendants, further answering, say that they admit that the forms of faith believed and taught in the said church at

this time are not those known as Calvinistic Trinitarian, and that the said church does not believe and teach the doctrine of the Trinity, the divinity (that is, the Deity or Divine Nature) of the Son of God, original sin, predestination, or particular election; and that the said church does not believe and teach the doctrines of the atonement and spiritual regeneration by the Holy Ghost, as they are usually held and received by Calvinistic Trinitarians.

And these defendants say, that they are not informed, and do not know, whether there was any class of Christians in this community, or in this Commonwealth, or in any of the colonies of Great Britain, or anywhere in the realm of Great Britain, or in the kingdom of Scotland, known as Unitarians, in 1735, or whether any such could exist in this colony or Commonwealth in the year 1735, under the laws of Great Britain, or whether any other doctrines of Christian belief were recognised, professed or tolerated at that time in this Commonwealth, except Orthodox Trinitarianism.

And these defendants, further answering, say that they are not informed, and know not whether the said land and meeting-house in said deed of John Little mentioned, are or are not now held and enjoyed by the said Unitarian church and society, by the same tenure and in the same manner as that by which the Church of Scotland held and enjoyed the lands whereon the meeting-houses were erected in the year 1735.

And these defendants, further answering, say that they admit that the said John W. Emery is now, and has been for some time past, a pew-holder in the church named in the bill; but they do not know and are not informed whether the said Emery is desirous that the said meeting-house should be given up and returned to the occupation of a church and society similar to that existing in the premises in the year 1735; nor whether the said Emery desires that the occupation and possession of the premises now held by by these defendants should be decreed by this honorable court to belong to the said First Associate Reformed Presbyterian Church and Society.

And these defendants, further answering, say that they admit that the street called in the said deed of John Little, "Long Lane," is now known as "Federal street," and the said street called Berry street, in said deed, is now known as Channing street in said Boston, and that the premises conveyed by John Little are those known as the meeting-house formerly called Dr. Channing's church, and now occupied by the Unitarian church and society, worshipping under the pastoral care of Rev. Ezra Stiles Gannett, D. D., in said Federal street and said Channing street, with a part of the lands now in the occupation and possession of the said Unitarian society, and that the said church and society is now a corporation duly established by the laws of this Commonwealth,

as is hereinbefore set forth; and they admit that the demand for the said premises and the refusal were made as is set forth in the said bill.

And these defendants, further answering, say that they have in their possession certain books of record of the actings and doings of the said church and society in Long Lane, previous to the year 1786, as is stated in the bill, and they admit that a demand for permission to examine the said books, and a refusal, were made as is stated in the said bill.

And these defendants, further answering, say that all the books of record, documents, vouchers, memoranda, papers, or writings which are in their possession or control, which as they are advised are material in this case, are as follows: a quarto volume containing the records of the doings of the proprietors, from the 5th day of April, in the year 1774, to the 29th day of May, in the year 1803; and a folio volume, containing the records of the doings of the proprietors, from the year 1803 to the present time; and that no books of records anterior to the year 1774 are, or have been, within the possession of these defendants to the best of their knowledge and belief.

And these defendants, further answering, say that they admit that the premises mentioned in the bill are of great value, but of what value they are unable to say, as the said premises form a species of property which is not the subject of any exchangeable or maketable value.

And these defendants, further answering, say that the rent of the parsonage-house, which forms a part of the premises mentioned in the said bill, is five hundred dollars per annum, and has been so since the year 1844, and that the rent of the cellar under their church has been three hundred dollars per annum since April, in the year 1848, and that previous to that date it was two hundred dollars per annum.

And these defendants, further answering, say that they derive no rents or profits from the pews in said church, other than the assessments levied upon the proprietors of the said pews for the support of public worship, and that the said assessments amounted from the year 1844 to the year 1846, inclusive, to the sum of nine hundred and seven and $\frac{64}{100}$ dollars per quarter, and that since the year 1846, to the present time, the said assessments have amounted to the sum of one thousand and forty-three and $\frac{64}{100}$ dollars per quarter.

And these defendants, further answering, say that there are two edifices of great value now standing upon the land claimed in the plaintiffs' bill, to wit, a meeting-house or church and a dwelling-house intended for a parsonage, and the said edifices were erected by the defendants at their own proper cost and charges, and the defendants submit that if the claim set up by the plaintiffs in their

bill should prevail, it can only reach the land conveyed by the said Little, and not the edifices erected thereon; wherefore the defendants pray this honorable court, that in case it should be determined that the plaintiffs have a legal and valid right to the said land, the plaintiffs be held to pay to the defendants the full value of the said edifices, the amount thereof to be ascertained in such manner as this honorable court may hereafter direct.

And these defendants, further answering, say that by their act of incorporation it becomes their duty to elect on the first Wednesday of May in each year a committee of seven persons to manage the prudential affairs of the defendants, and that in pursuance thereof, at the annual meeting of the defendants held on Wednesday the 7th day of May, in the year 1851, the following persons were duly chosen members of the said committee, to wit, Thomas Lamb, Stephen Fairbanks, Benjamin F. White, Robert B. Storer, Joseph W. Howe, James McGregor, John H. Rogers.

And these defendants deny that there is any other matter, cause or thing in the said complainants' said bill of complaint contained material or necessary for these defendants to make answer unto, and not herein and hereby well and sufficiently answered, confessed, traversed and avoided and denied, which is true to the knowledge and belief of these defendants; all which matters and things these defendants are ready and willing to aver, maintain and prove as this honorable court shall direct, and humbly pray to be hence dismissed with their reasonable costs and charges in this behalf most wrongfully sustained.

In witness whereof the defendants have affixed to this their answer their corporate seal, and caused the same to be subscribed by the said Thomas Lamb, Stephen Fairbanks, Benjamin F. White, Robert B. Storer, Joseph W. Howe, James McGregor and John H. Rogers, the members of their aforesaid prudential committee.

[SEAL.]

THOMAS LAMB,
STEPHEN FAIRBANKS,
BENJAMIN F. WHITE,
ROBERT B. STORER,
JOSEPH W. HOWE,
JAMES McGREGOR,
JOHN H. ROGERS.

*Award of Jacob Sheafe, Stephen Boutineau and Hugh Vans, as referred to in the foregoing answer.*

To all people unto whom this present writing of award shall come, Jacob Sheafe, gentleman, Stephen Boutineau and Hugh Vans, merchants, all of Boston, in the county of Suffolk and Province of the Massachusetts Bay, in New England, send greeting:

Whereas, upon sundry disputes and differences arisen between John Little of Boston aforesaid, gardner, on the one part, and George Glen, taylor, Edward Allen, taylor, Andrew Knox, mariner, George Southerland, shopkeeper, William Hall, leather-dresser, Daniel Macneal, laborer, Samuel Miller, gunsmith, Abraham All, taylor, and William Shaw, taylor, all of Boston aforesaid, of the other part, they the said partys, for the determination thereof, and by their mutual consents, signifyed by their several obligations, dated the fourteenth day of January, anno Domini 1734, appoint us, the said Jacob Sheafe and Stephen Boutineau, arbitrators of all their differences till that time, and agreed that either of us, in case of our non-agreement, should choose a third person; and we being willing and desirous to determine the disputes and differences between said partys, in order to effect the same, have chosen the said Hugh Vans to assist us therein. And the said partys, by the said obligations, further agreed that we, making up our award of the same, under our hands and seals, ready to be delivered to the said partys on or before the fifteenth day of April current, should finally determine the premises, as by their several obligations, with conditions for the performance thereof, will more fully appear.

Now, in pursuance of the said submission, and to answer the end proposed thereby, we, the saide Jacob Sheafe, Stephen Boutineau and Hugh Vans accept of the burthen of the said award, and having fully heard both partys, perused, examined and deliberately considered on all papers, matters and things disclosed or pretended to us by either party, as the cause of their variance, do make, publish and declare this, our award, between them concerning the premises, in manner following, that is to say: Imprimis. We award and order that the said George Glen, Edward Allen, Andrew Knox, George Southerland, William Hall, Daniel Macneal, Samuel Miller, Abraham All, and William Shaw, shall, within the space of two months from the date hereof, pay, or cause to be paid, unto the said John Little, the sum of one hundred and forty pounds and five pence, in publick bills of credit, which is and shall be in full of the claimes and demands which the said John Little had against ye congregation belonging to the Presbyterian meeting-house in Long Lane, in Boston aforesaid, with respect to his attendance upon and looking after the building of ye s'd meeting-house, and all his accounts of charges and disbursements about the same, and the land whereon it stands, as also touching and concerning the said Little's purchase of the said land of Henry Deering, esq., at the time of entering into the said bonds of submission.

Item. We award and order, that upon ye payment of ye s'd sum, the said John Little shall make and execute in due form of law unto the said congregation, a good lawful deed of conveyance of the land whereon ye s'd meeting-house stands, and is thereunto

appertaining, with the privaledges and appurtenances thereunto belonging, which the said Little bought and purchased of the said Deering as aforesaid: to hold the same unto the said congregation according to ye tenures and after the same manner as the Church of Scotland hold and enjoy the lands whereon their meeting-houses are erected.

Item. We agree and determine, and do hereby ascertain the right and interest which the s'd John Little hath in the said meeting-house, to be the pew and seat therein now in his possession, which is to remain good to him forever, in the same manner as the rest of the proprietors in the said meeting do hold and enjoy their respective rights and interests therein.

Item. We award and order, that the said John Little shall assign, transfer and make over unto the said George Glen, Edward Allen, Andrew Knox, George Southerland, William Hall, Daniel Macneal, Samuel Miller, Abraham All, and William Shaw, as they are a committee chosen and appointed by the said congregation for managing the prudential affairs thereof, the outstanding debts due to the said congregation, amounting, as by account appears, to the sum of fifty-four pounds five shillings, and shall invest them with all the powers he, ye said Little, is possessed of, in order to recover the same for the use of the said congregation.

Lastly. We award and order, that the charge of this arbitration shall be borne and sustained by the said partys, share and share alike.

In witness whereof we have hereunto set our hands and seals, the ninth day of April, anno Domini one thousand seven hundred and thirty-five.

JACOB SHEAFE, and a seal.
STEPH. BOUTINEAU, and a seal.
HUGH VANS, and a seal.

Signed, sealed and delivered in ye presence of—
By the said Stephen Boutineau and Hugh Vans,
DANIEL MARSH.

And by the said Jacob Sheafe, in the presence of us,
DANIEL MARSH,
ANTH. WOULFE.

Copy of the Letter, dated September 11th, 1782, addressed by William McNeill, Andrew Black, Robert Weir, Hector McNeill, and Simon Elliott, a committee of the Congregation in Long Lane, to the Associate Presbytery of New York, referred to in the foregoing answer.

To the Associate Presbytery of New York, to meet at Peterburough the 3d Wednesday in September, 1782.

REVEREND GENTLEMEN: Convinced of the necessity of a religious

life, and dwelling in a land where the means of grace are plentifully enjoyed by others, we ardently wish to see ourselves upon a footing with our fellow-Christians, in observing the institutions of the gospel.

And whereas the preaching of the word hath been made (through the Divine blessing) the means of convincing and converting sinners, and building them up in the ways of virtue and holiness, it is our earnest desire to provide ourselves with these means which God has always been pleased to continue and bless for the spiritual good and edification of his church, firmly persuaded that our waiting upon Him, in the way of his own appointment, is not only our duty, but the surest way to obtain His blessing here, and of being prepared for a blessed eternity with Himself in glory.

For this salutary purpose we have, (we trust in God,) by the special guidance of Divine providence, fixed our choice upon the Rev'd Mr. Robert Annan, to administer the word and ordinances of the gospel amongst us—humbly hoping that the Lord will favor this our choice with his Divine presence and blessing, and make him the happy instrument of collecting our dispersed people, (who have been long wandering like sheep without a shepherd,) and reviving once more the principles, piety, and religion amongst us.

From the good character we had of this Rev. gentleman before he came to us, from the knowledge we have had of himself since our acquaintance with him, and from every idea we have been able to form of a gospel minister, we plainly see the suitableness there is between his abilities and our necessities.

Wherefore, having stood single and unconnected with any of the Presbyteries in this country for several years past, and finding that Mr. Annan still inclines to continue his connection with your reverend body, we find ourselves impelled by every rational motive to make our application to you at this time, earnestly beseeching you to take the case of our society into your serious consideration, that our dissolution as a worshipping assembly may be prevented, which otherwise must surely happen, unless the Lord be pleased to bless us very soon with a faithful minister.

We are persuaded that our necessities will plead for us, as well as our danger of falling into nothing as a society, if our present request be not attended to; and we hope these considerations will induce you to use your interest and influence with the Rev'd Mr. Annan and all concerned, to bring about his settlement with us at Boston.

Upon this express design, we have sent our trusty friends, Hector McNiell, Simon Elliott, and Francis Wright, or any two of them, as our commissioners, to confer with you, and conclude on such measures as may be thought most likely to effect this purpose, in the best and speediest manner possible.

We are, gentlemen, with sincerity and brotherly love, for ourselves, and on behalf of the Presbyterian congregation in Long Lane, in the town of Boston, your friends and humble servants,

WILLIAM McNIELL,
ANDREW BLACK,
ROBERT WEIR,
HECTOR McNIELL,
SIMON ELLIOTT.

Boston, Sept. 11th, 1782.

To the Rev'd Associate Presbytery of New York, to sit at Peterburough, 3d Wednesday, this instant, Sept'r.

Whereupon the cause was continued unto the November term, eighteen hundred and fifty-one, and thence to the March term, eighteen hundred and fifty-two, when the informant amended his bill as follows, to wit:

COMMONWEALTH OF MASSACHUSETTS,
*County of Suffolk, ss.*

Supreme Judicial Court.—In equity.

JOHN H. CLIFFORD, Esquire, Attorney General, &c., at the relation of the Associate Reformed Presbyterian Synod of New York, and others, Informant,
and
THE PROPRIETORS OF THE MEETING-HOUSE IN FEDERAL STREET, in the town of Boston, Defendants.

The informant amends his bill as follows:

On page 3, after the 11th line, he inserts the words following, to wit:

"And the said Attorney General, at the relation aforesaid, further informs your honors that the said John Little, being minded and disposed to devote his property to the founding and supporting of a church and place of religious worship, to be held and enjoyed forever for the preaching and maintaining of the doctrine, discipline, worship, and form of government of the church known as the Presbyterian Church of Scotland, and to create and found a trust and charity therefor, did thereafter, to wit, on the 9th day of June, in the year of our Lord 1735, enter into and execute."

On page 3, line 12, he strikes out the words, "That thereafter, to wit, on the ninth day of June, in the year of our Lord one thousand seven hundred and thirty-five, the said John Little, by."

On page 4, after line 24, he inserts the words following, to wit:

"And the said attorney, at the relation aforesaid, further informs your honors, that the said John Little and the said George Glen, William Hall, William Shaw, and Andrew Knox, together

with certain others then living in said Boston, being Presbyterians, and strongly attached to the doctrine, discipline, and worship of the church known as the Presbyterian Church of Scotland, being minded and disposed to devote their property to the founding and supporting of a church, and place of religious worship, to be held and enjoyed forever, for the preaching and maintaining of said doctrine, discipline, and worship, and to create and found a trust and charity therefor, did severally contribute, the said John Little the land in said deed mentioned, (in whole or in part,) and the said George Glen and others, moneys wherewith the said meeting-house was built, and the expenses attending the premises were defrayed, and did thereafter, in and by the said indenture, create and establish the said trust and charity."

On page 5, line 6, after the words "John Little," he inserts the words following, to wit:

"And by the said John Little, George Glen and others, as aforesaid, and by the said deed."

On page 5, line 25, after the words "John Little," he inserts the words "and the said John Little, George Glen and others."

On page 6, line 4, after the words "John Little," he inserts the words "and by the said John Little, George Glen and others."

On page 6, lines 9, 10 and 16, before the word "Presbyterian," he inserts the word "Scottish" on each of said lines.

On page 7, lines 1, 3, 4, 6, and 14, before the word "Presbyterian," he inserts the word "Scottish" on each of said lines.

On page 12, lines 8, 10 and 13, before the word "Presbyterian," he inserts the word "Scottish" on each of said lines.

On page 12, after line 10, he inserts the words following, to wit:

"That the said George Glen and others were members of the said society and congregation, and were attached to the said church, and professed the said doctrines, and were not Congregationalists nor Unitarians, but were Scottish Presbyterians, and did not intend to establish and did not establish the trust aforesaid for the use, benefit, or behoof of any Congregational or Unitarian society, but for a Scottish Presbyterian and Trinitarian society, and no other."

On page 16, line 13, after the word "services," strike out the words following, to wit: "which were principally supplied by direction of the Presbytery of Boston, under whose authority said church and congregation then existed."

On page 17, the paragraph commencing with the words "that the said church," and ending with the words "to be legally connected," he strikes out.

On page 22, line 3, after the words "John Little," he inserts the words following, to wit: "and of the said John Little, George Glen, and others;" and on line 4, after the word "aforesaid," he

inserts the words, "and contrary to the said deed, and contrary to the trust and charity aforesaid."

Onsame page, line 13, he inserts before the word "Presbyterian," the word "Scottish."

On page 23, line 1, after the words "John Little," he inserts the words "and by the said John Little, Glen and others."

And on line 13, after the words "John Little," he inserts the words "of the said Glen and others, and of the said congregation as it existed in the year seventeen hundred and thirty-five."

On page 24, line 19, before the word "Presbyterian," he inserts the word "Scottish."

On page 25, line 7, after the words "John Little," he inserts the words following, to wit: "and of John Little, George Glen and others, and contrary to the said deed, and to the charity and trust aforesaid." On same page, line 19, after the words "John Little," he inserts the words "and by the said John Little, George Glen and others, and by the said deed."

On page 26, line 2, after the words "John Little," he inserts the words "George Glen and others, and by the said congregation."

On same page, line 19, after the words "John Little," he inserts the words "by the said Glen and others."

On page 28, line 13, after the words "John Little," he inserts the words "George Glen and others."

On page 37, lines 3, 11, and 18, before the word "Presbyterian," he inserts the word "Scottish" on each of said lines. And on same page, after 6th interrogatory, he inserts the following, to wit:

"Whether the said meeting-house and land so conveyed by the said John Little was not intended by the said John Little, George Glen and others, for the sole use, occupation, and enjoyment of the said society in said deed maintained, and of their successors, forever, as is stated in this bill. Whether it was not the intention of the said Little, Glen and others, that the said premises should be forever enjoyed by a Scottish Presbyterian Trinitarian society, and none other, and not by a Congregational Unitariano sciety."

On page 42, lines 8, 14, 16, and 18, before the word "Presbyterian," he inserts the word "Scottish" on each of said lines; and on same page, after 25th interrogatory, he inserts the following, to wit:

Whether the said George Glen and others were members of the said church and society in Long Lane.

Whether they were attached to the doctrine, discipline and worship of the Scottish Presbyterian Church; and whether they professed and conformed thereto, or whether they were Congregationalists or Unitarians.

Whether the said John Little, George Glen, and others, did or

did not intend to establish, and did not in fact establish, the charity and trust in this bill mentioned, for the purposes herein set forth.

On page 47, *page* 16, he erases the words "eighty-two," and inserts the words "seventy-four."

On page 50, line 18, before the word "Presbyterian," he inserts the word "Scottish."

On page 52, line 10, before the word "Presbyterian," he inserts the word "Scottish."

On page 52, line 26, after the words "John Little," he inserts the words "and by the said John Little, George Glen, and others, and by said deed."

On page 53, line 13, after the words "John Little," he inserts the words "and of the said Glen and others, and of the said congregation."

On page 54, line 18, before the word "Presbyterian," he inserts the word "Scottish."

On page 55, line 3, after the words "John Little," he inserts the words "and by the said John Little, George Glen and others, and by the said deed."

On same page, line 16, after the words "John Little," he inserts the words "by the said Glen and others, and by the said congregation."

On same page, line 25, after the words "John Little," he inserts the words "and by the said Glen and others, and by the said congregation."

On page 60, line 19, after the words "John Little," he inserts the words "and so created by the said John Little, George Glen, and others, and by the said deed."

RICH'D H. DANA, JR.,
*Solicitor, and of Counsel.*

Thence the cause was continued unto the November term eighteen hundred and fifty-two, when the defendants filed their answer to the bill as amended as follows, to wit:

Commonwealth of Massachusetts.

COUNTY OF SUFFOLK, *ss.*

Supreme Judicial Court—In Equity.

JOHN H. CLIFFORD, Esquire, Attorney General, &c., at the relation of the Associate Reformed Presbyterian Synod of New York and others, Informant,
and
THE PROPRIETORS OF THE MEETING-HOUSE IN FEDERAL STREET, IN THE TOWN OF BOSTON, Defendants.

*Answer of the Defendants to the amended Bill of the Complainants.*

And now, for further answer to the amended bill of the said

complainants, these respondents make answer and say, that they deny that the said John Little did, on the 9th day of June, 1735, make and execute the indenture in the said bill mentioned in consequence of his being minded and disposed to devote his property to the founding and supporting of a church and place of religious worship, to be held and enjoyed forever for the preaching and maintaining of the doctrine, discipline, worship, and form of government of the church known as the Presbyterian Church of Scotland, and to create and found a trust and charity therefor. On the contrary, these respondents aver that the said John Little was simply one of numerous associates, who undertook to build, and did build, for their common use and benefit, a meeting-house on the land in question, in the conducting of which matter, and the purchase of said land, the said John Little was the common agent of all the associates up to and until the period when a difficulty occurred between them, which led to the arbitration and subsequent conveyance by the said Little, as set forth in the former answer of these respondents; and that in the said enterprise the said Little devoted no part of his property further than his contributory share, for which he was reimbursed by the reservation in the said deed of a pew and seat in the said meeting-house, as is shown by the said deed of the said Little conveying the premises.

And these respondents, further answering, deny that the said John Little and the said Glen, Hall, Shaw, and Knox, together with certain other persons, then being in Boston, being Presbyterians, and strongly attached to the doctrine, discipline, and worship of the church known as the Presbyterian Church of Scotland, or being minded and disposed to devote their property to the founding and supporting of a church and place of religious worship, to be held and enjoyed forever for the preaching and maintaining of the said doctrine, discipline, and worship, and to create and found a trust and charity therefor, did severally contribute, the said Little the said land in the said deed mentioned, in whole or in part, and the said Glen and others moneys wherewith the said meeting-house was built, and the expenses attending the premises defrayed, or did thereafter, in and by the said indenture create and establish the said charity, or any charity whatever. On the contrary, these respondents aver that the said Little, Glen, Hall, Shaw, and Knox, and all the other parties referred to in the said bill, without any intent whatever to create any charity, but with the simple purpose of erecting a meeting-house for their common use and enjoyment, and to be held and enjoyed by them in proportion to the sums respectively contributed by them towards the said enterprise, did contribute towards the purchase of the said land and the erection of the said meeting-house upon the said land in the said bill mentioned; and in consideration thereof did receive and retain equivalent rights and titles as pew-holders in proportion to the amounts by them respectively contributed; and that neither of the

said parties, so far as your respondents are informed and believe, did give or devote any part of their property to the founding or support of any charity whatever, but did respectively receive a full consideration as aforesaid for all sums by them contributed towards the purchase of the said land and the erection of the said meeting-house.

And these respondents, further answering, deny that the said Little, Glen, Shaw, Knox and Hall, had good right to create and establish, or to accept any such trust or charitable estate, as is in the said bill set forth; on the contrary, the said parties under the award, in pursuance of which the said deed ought to have been and was made and executed, were bound to execute in due form of law a good and lawful conveyance to the congregation, by whose contributions and for whose benefit the said land was purchased, and the said meeting-house built.

And these respondents, further answering, say that they do not admit that the said meeting-house and land so conveyed by the said John Little was intended by the said Little, Glen and others for the sole use, occupation and enjoyment of the said society in the said deed mentioned, and their successors forever, as stated in the said bill, or that it was the intention of the said Little, Glen and others, that the said premises should be forever enjoyed by a Scottish Presbyterian Trinitarian society, and none other; on the contrary, these respondents aver, that the said deed and conveyance were made and accepted by all the parties thereto or interested therein, for the purposes and in the manner set forth in their answer to the original bill, and to the amended bill of the said complainants.

And these respondents, further answering, admit, that according to their best belief the said Glen and others were members of the said society and congregation, worshipping in the meeting-house so erected in Long Lane, as by them hereinbefore set forth; but whether they, or any, and which of them if either, were attached to the Scottish Presbyterian Church, or professed the doctrines thereof, or were or were not Congregationalists or Unitarians, or were or were not Scottish Presbyterians, these respondents are unable to state, and pray that the complainants may make proper proof thereof, if material. And they aver that there was no intention on the part of the said Glen and others to create any other trust, or establish any other use, or to convey the said land for any other intent or purpose, or to be enjoyed in any other manner, than is set forth in this and their former answer.

And the respondents, further answering, say that they know not and are not informed of the tenure of the lands held by the Church of Scotland in 1735; nor whether, if a congregation, parish or society of the said church ceased to be Scottish Presbyterian in any respect, whether in faith, form of worship and discipline, it

ceased to hold and enjoy the lands on which their meeting-house was erected; nor whether the same passed under the control of the general assembly of the Church of Scotland, to be used by some other Scottish Presbyterian society; nor whether any Unitarian society in the year 1735 could not hold lands under the Church of Scotland; nor whether in the same year a religious society belonging to the Church of Scotland, subsequently becoming Unitarian, could not hold the lands formerly belonging to it as a Church of Scotland; nor whether by such change of faith or government, the land held by such church ceased to be their property, and reverted to the general assembly, as set forth in the said bill; and they pray that on all these points the plaintiffs be required to make due and legal proof thereof, so far as the same may be material to this inquiry.

And these respondents, further answering, say that they are not informed and do not know whether the said John Little was a Scottish Presbyterian, and they pray that the complainants may be required to make proof thereof if material.

And these respondents, further answering, say that they are not informed, and cannot answer whether the said church and society in Long Lane continued in fellowship until the year 1774, with the Presbytery of Boston, but they are informed and believe, that for a period of about ten years following the year 1773, the said church and society withdrew from all association with any Presbytery whatever, and so far as they are informed and believe, it was not any notified temporary declinature for a special and temporary purpose, as is in the said bill averred, but it was with the purpose and intent of changing their form of worship, and that the same continued until the settlement of the said Annan.

And these respondents, further answering, say that they are informed and believe that the proprietors of the meeting-house in Long Lane in August, in the year 1776, did, by an unanimous vote of all persons legally or equitably interested in the said land and meeting-house, embrace the Congregational mode of government, and resolve themselves into a church and society, different from a Presbyterian church and society, and that the same has ever since continued to be so, and to be different from a Scottish Presbyterian society; but how far the same was and has been different from the said church and society as it existed in the year 1735, and under the administration of the said Moorhead and Annan, these respondents are not informed and do not know, and pray that the plaintiffs be required to make due and legal proof thereof, so far as the same may be material to this inquiry.

And these respondents deny that any trust was established by the said John Little, or the said John Little, Glen and others, or that, if there were any, it was perverted, abused, and misapplied by the said change.

And these respondents are informed and verily believe, that on

the 4th day of April, in the year 1787, the said Rev. Jeremy Belknap was ordained as minister and pastor of the said church and society; and that he was a Congregational minister, and not a Presbyterian minister, and not a member of any Presbytery of the Associate Reformed Presbyterian Church of North America, but they know not whether he was a minister of the faith and discipline of the said Little, and the said Glen and others, and of the said congregation, as it existed in the year 1735, and of the said Moorhead and the said Annan, and pray that the plaintiffs be required to make due and legal proof thereof, so far as the same may be material to this inquiry.

And these respondents, further answering, say that they admit that the said meeting-house and lands have continued from the date of the installation of the said Rev. Jeremy Belknap, until the present time, to be used and occupied by a Congregational society, and they are informed and believe, that after the date of the said installation the opinion of the pew-holders and society underwent a gradual change, and they became an Unitarian society, and not an Orthodox and Trinitarian society, but at what particular time the said change took place, and whether or not it was in the year 1815, these respondents know not, and are not informed.

And these respondents admit that the said society is and has been for many years past an Unitarian society, but they deny that such change of faith was a perversion and abuse of the trust asserted to have been created by the said John Little, and by the said John Little, George Glen and others, or that it was contrary to the said deed, and they deny that any trust or charity was created thereby.

And these respondents, further answering, say that they know not and are not informed whether the discipline and worship of the said Unitarian society are different from those of the Church of Scotland, or of the Associate Reformed Presbyterian Church of North America, nor whether they are different from those observed and enforced in the said church in Long Lane in the year 1735, and as they were practised, obeyed, and conformed unto by the said John Little, George Glen and others, and by the said congregation; and they pray that the plaintiffs be required to make due and legal proof of the same, so far as it may be material to this inquiry.

And these respondents, further answering, say that they are not informed, and do not know, whether the forms of faith of the said Unitarian Church and Society are different from those believed by the said church and society in the year 1735, nor whether they differ from, nor whether they are the same as those professed by the said John Little, and by the said Glen and others, and preached by the said John Moorhead in 1735, nor wherein they differ.

And these respondents, further answering, say that they admit that the said John W. Emery is now, and has been for some time past, a pew-holder in the church named in the bill, but they do not know, and are not informed, whether the said Emery is desirous that the said meeting-house should be given up and returned to the occupation of a church and society similar to that existing in the premises in the year 1735, or similar to the one to which the said John Little, George Glen and others belonged, nor whether the said Emery desires that the occupation and possession of the premises now held by these respondents should be decreed by this honorable court to belong to the said First Associate Reformed Presbyterian Church and Society.

And these respondents, further answering, deny that said meeting-house and land so conveyed by said John Little was intended by said John Little, George Glen and others, for the sole use, occupation, and enjoyment of said society, in said deed mentioned, and of their successors forever, in the manner as is stated in the bill, or that the same should be forever and exclusively enjoyed by a Scottish Presbyterian Trinitarian Society; but they aver that the said conveyance was intended by the grantor and grantees, and the other parties interested in the erection of said meeting-house, for their use and enjoyment, and disposition, as set forth in this and the former answer of these respondents.

In witness whereof, the respondents have affixed to this their answer to the amended bill of the complainants their corporate seal, and caused the same to be subscribed by Thomas Lamb, Stephen Fairbanks, B. F. White, R. B. Storer, James McGregor, Jno. H. Rogers, Jos. W. Howe, the members of their prudential committee.

[SEAL.]

THOMAS LAMB,
STEPHEN FAIRBANKS,
BENJAMIN F. WHITE,
ROBERT B. STORER,
JAMES McGREGOR,
JOHN H. ROGERS,
JOSEPH W. HOWE.

And the informant also filed his replication as follows, to wit:

Supreme Judicial Court.

SUFFOLK, *ss.*

JANUARY, 1853.

The Replication of John Henry Clifford, esquire, Attorney General of the Commonwealth, by and at the relation of the Associate Reformed Presbyterian Synod of New York and others, complainants, to the answer of the Proprietors of the Meeting-house in Federal street, in the town of Boston, defendants.

The repliants, saving to themselves all advantage of exception to the defendants' answer, say they will prove their bill to be true and sufficient in law, and join issue with the said defendants.

By their Solicitor,

RICH'D H. DANA, JR.

Thence the cause was continued to the March term, 1853, and from that term unto the November term, in said year, when the same came on for hearing before one of the justices of said court, and was continued on report, for the consideration by the full court of the law of the case, unto the next term, and so from term to term until the March term, 1855, aforesaid, when a final decree was entered as follows, to wit:

COMMONWEALTH OF MASSACHUSETTS,
*Suffolk, ss.*

Supreme J. Court—March Term, A. D. 1855.

ATTORNEY GENERAL, by Information, &c.,
vs.
PROPRIETORS OF THE MEETING-HOUSE IN FEDERAL STREET, IN BOSTON.

And now this cause coming on to be heard upon the several matters set forth in the information, answer thereto, and pleadings filed by the respective parties, and the evidence relating thereto, and what was alleged by the counsel on both sides having been considered, it is ordered, adjudged, and decreed by the court, that the said information or bill filed by the said Attorney General be dismissed, and the same is hereby dismissed.

By the court: GEO. C. WILDE, *Clerk.*

March 6, 1855.

All and singular which premises we have held good, by the tenor of these presents, to be exemplified.

[SEAL.] In testimony whereof, we have caused the seal of our said supreme judicial court to be hereto affixed.

Witness Lemuel Shaw, esquire, chief justice of our said supreme judicial court, at Boston, this fifth day of December, A. D. eighteen hundred and fifty-nine.

GEO. C. WILDE, *Clerk.*

Supreme Court of the United States—Dec. T., 1859.

THE ATTORNEY GENERAL, &c.,
vs.
THE PROPRIETORS OF THE MEETING-HOUSE IN FEDERAL STREET.

In this case it is stipulated and agreed, that the matter of the following printed sheets, paged 37—40, and 83—141, shall be

deemed, considered and printed as a part of the record and proceedings in the above entitled case.

C. CUSING, *for Pl'ff in Error.*
S. BARTLETT, *for Def't in Error,*
who enters an appearance not general,
but to move to dismiss the suit.

*Little to Glen, &c.*

This indenture, made the ninth day of June, anno Domini one thousand seven hundred and thirty-five, and in the eighth year of the reign of our Sovereign Lord George the Second, by the Grace of God, of Great Britain, France, and Ireland, King, Defender of the Faith, &c.: between John Little, of Boston, in the county of Suffolk and province of the Massachusetts Bay, in New England, gardener, on the one part, and George Glen, tailor, William Hall, leather dresser, and William Shaw, tailor, all of Boston aforesaid, and Andrew Knox, of said Boston, mariner, for themselves and as a committee chosen and appointed by the rest of the congregation belonging to the Presbyterian meeting-house in Long Lane, in Boston aforesaid, for managing the prudential affairs thereof, on the other part, witnesseth:

That the said John Little, for and in consideration of the sum one hundred and forty pounds and five pence in good public bills of credit of the province aforesaid, to him in hand, at and before the ensealing and delivery of these presents, well and truly paid by the said George Glen, William Hall, William Shaw, and Andrew Knox, in behalf of themselves and as a committee chosen as aforesaid, the receipt whereof the said John Little doth hereby acknowledge, and thereof doth acquit and discharge the said George Glen, William Hall, William Shaw, and Andrew Knox, in behalf of themselves and in their capacity aforesaid, and their successors in said trust, and each every of them forever, by these presents, hath given, granted, bargained, sold, aliened, enfeoffed, released, conveyed, and confirmed, and by these presents doth give, grant, bargain, sell, alien, enfeoffe, release, convey, and confirm, unto the said George Glen, William Hall, William Shaw, and Andrew Knox, a certain piece or parcel of land, situate, lying, and being in Boston aforesaid, and is bounded in the front westerly upon Long Lane, so-called, there measures one hundred and twenty-nine feet; northerly by land of Mr. Jonathan Loring, and there measures ninety-eight feet; easterly by land of Nathanael Green, esq., and there measures one hundred and fifteen feet; southerly by Bury street, so-called, and there measures one hundred and twenty-six feet and an half-foot; or however otherwise butted and bounded, or be the dimensions on either side more or less; also the meeting-house on the said land standing, together with all

and singular the rights, members, profits, privileges, fences, improvements, and appurtenances whatsoever, to the said granted and bargained piece or parcel of land and meeting-house belonging, or in anywise appertaining, or therewith now used, occupied, or enjoyed; also all the estate, right, title, interest, inheritance, use, possession, property, claim, and demand whatsoever, of him, the said John Little, of, in, and to the said granted and bargained premises, and every part and parcel thereof, with the appurtenances; and the reversion and reversions, remainder and remainders thereof, saving and always reserving to the said John Little, his heirs and assigns forever, the right and interest which the said John Little hath in the said meeting-house and land, to wit, the pew and seat therein now in his possession, which is to remain good to him, his heirs and assigns forever, in the same manner as the rest of the proprietors in the said meeting-house do hold and enjoy their respective rights and interests therein, which right and interest, by a certain instrument of award, made by Jacob Sheaf, gentleman, and Stephan Boutineau and Hugh Vans, merchants, all of Boston aforesaid, between the said John Little on the one part, and the said George Glen, William Hall, William Shaw and others, a committee chosen for the purposes aforesaid, on the other part, bearing date the ninth day of April, one thousand seven hundred and thirty-five, was ascertained to the said John Little, as by the said award, reference thereto being had, may more at large appear:

To have and to hold the said piece or parcel of land, meeting-house, and premises, with the appurtenances, (saving and reserving as aforesaid,) unto the said George Glen, William Shaw, and William Hall, and Andrew Knox, in their capacity aforesaid, and to their successors in that trust and office forever, but to and for the only proper use, benefit, and behoof of the said congregation (according to the tenures and after the same manner as the Church of Scotland hold and enjoy the lands whereon the meeting-houses are erected) forever, and for no other use, intent, or purpose whatsoever, with warranty against him, the said John Little, and his heirs, and all and every other person and persons whatsoever from, by, or under him or them, together with the benefit of a warranty in a certian deed mentioned from Theodore Atkinson, gentleman, as the aforenamed Nathaniel Green purchased the same, as in and by the said deed, bearing date the twentieth day of November, 1723, of record in the registry of deeds for the county of Suffolk, may appear, which granted land and premises, with the appurtenances before the said meeting-house was thereon erected, the said John Little purchased of Henry Deering, esq.,

In witness whereof I, the said John Little, and Mary, his wife, (in token of her free consent to these presents and release of her

right and title of dower, and thirds of, in and unto the aforegranted and bargained premises, with the appurtenances,) have hereunto set their hands and seals the day and year first aforewritten. John ⋈ Little, his mark and a seal; Mary Little and a seal. Signed, sealed, and delivered in presence of William Morto, John Sale. Received on the day of the date of the aforewritten deed of the aforenamed George Glen, William Hall, and William Shaw, and Andrew Knox, committee as aforesaid, the sum of one hundred and forty pounds and five pence, being the consideration money aforementioned. John ⋈ Little, his mark. Suffolk, ss. Boston, June 9th, 1735. The aforenamed John Little, and Mary, his wife, personally appearing, acknowledged the aforewritten instrument by them executed to be their act and deed. Before me, JOSHUA WINSLOW, justice of the peace, June 10, 1735. Received, and accordingly entered and examied—

Per SAMUEL GERRISH,
*Register.*

A true copy from the records of deeds for the county of Suffolk, lib. 51, folio 14.

Attest: HENRY ALLINE,
*Register.*

At Edinburgh, the twenty-fifth day of October, one thousand eight hundred and fifty-three, which day there was presented by Henry David Hill, writer to Her Majesty's signet, and notary public, to Joseph Grant, esquire, residing in Drummond Place, Edinburgh, one of the justices of the peace for the city of Edinburgh, a commission issued from the supreme judicial court of the Commonwealth of Massachusetts, dated twenty-eighth September, eighteen hundred and fifty-three, addressed to any justice of the peace legally empowered to take depositions or affidavits in Edinburgh, in Scotland, empowering such to take the depositions of certain parties therein named, to be used in a suit now pending in the said supreme judicial court, between the Attorney-General, &c., by information, as plaintiff, and the Proprietors of the Meeting-house in Federal street, Boston, as defendants; of which commission the said Joseph Grant accepted, and appointed James Lothian Donald Ferguson, writer, in Edinburgh, to be clerk thereto, who gave his oath de fideli administratione officii—

Compeared John Schank More, esquire, one of the parties named in the said commission, who being solemnly sworn and examined with reference to the interrogatories and cross-interrogatories annexed to the said commission, depones as follows:

1. To the first interrogatory, I depone that my name is John Schank More, and I am aged upwards of sixty years, and I reside in Edinburgh, and am a member of the Faculty of Advocates, and professor of the law of Scotland in the University of Edinburgh.

right and title of dower, and thirds of, in and unto the aforegranted and bargained premises, with the appurtenances,) have hereunto set their hands and seals the day and year first aforewritten. John ⋈ Little, his mark and a seal; Mary Little and a seal. Signed, sealed, and delivered in presence of William Morto, John Sale. Received on the day of the date of the aforewritten deed of the aforenamed George Glen, William Hall, and William Shaw, and Andrew Knox, committee as aforesaid, the sum of one hundred and forty pounds and five pence, being the consideration money aforementioned. John ⋈ Little, his mark. Suffolk, ss. Boston, June 9th, 1735. The aforenamed John Little, and Mary, his wife, personally appearing, acknowledged the aforewritten instrument by them executed to be their act and deed. Before me, JOSHUA WINSLOW, justice of the peace, June 10, 1735. Received, and accordingly entered and examied—

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Compeared John Schank More, esquire, one of the parties named in the said commission, who being solemnly sworn and examined with reference to the interrogatories and cross-interrogatories annexed to the said commission, depones as follows:

1. To the first interrogatory, I depone that my name is John Schank More, and I am aged upwards of sixty years, and I reside in Edinburgh, and am a member of the Faculty of Advocates, and professor of the law of Scotland in the University of Edinburgh.

I have practised as an advocate for more than forty years, and I have been professor of law for several years.

2. To the second interrogatory, I depone that I am acquainted with the discipline, doctrine, form of worship, and laws of tenure of the Church of Scotland in the year 1735, and down to the present time. The means of my being so acquainted have arisen from the perusal of books and writings, as an advocate and professor, and from attendance both in the civil courts of law, and in the ecclesiastical courts of the church, of which last I have been repeatedly elected a member, particularly of the Presbytery of Edinburgh, and of the general assembly of the Church of Scotland. I have also officiated as an elder of the Church of Scotland for more than twenty years.

3. To the third interrogatory, I depone that, so far as the proper parish churches of the Established Church of Scotland are concerned, they must, by the law of Scotland, be built and maintained by the landholders of each parish, and they cannot be diverted from their connection with the Church of Scotland, but must ever remain in such connection. By the statute 1707, c. 9, it is enacted that the transporting of parish churches—that is, changing the sites thereof, and the building and erecting of new churches, must be authorized by the Court of Teinds; and all parish churches are held to be allodial, holding of no superior, but standing upon the footing of the common law, or on the decrees of the Court of Teinds, or, in a few instances, on the authority of special acts of Parliament. But I apprehend that this interrogatory is not intended to apply to proper parish churches, but rather to chapels or meeting-honses which have been erected in connection with the Church of Scotland, and which are held under trusts, similar to the trust created by the indenture of 9 June, 1735, in regard to the meeting-house at Boston, of which I have seen a printed copy. By these trusts such chapels or meeting-houses are either expressly or by inference declared to be held for the use of the congregation in connection with the Church of Scotland; and it has been decided in regard to chapels or meeting-houses held under such trusts that the Presbytery of the bounds may, in the event of any violation of the trust, reclaim the land on which the chapel or meeting-house is built, and the chapel or meeting-house itself, and may insist upon its being devoted exclusively to the use of a congregation in communion with the Church of Scotland as by law established. This holds not merely where the congregation, or a majority of the members, have become Independents or Congregationalists, and repudiate the Presbyterian polity, but also in those cases where they retain the Presbyterian polity, if they do not continue in connection with the Established Church. This has been illustrated by several decisions of the Court of Session, which is our Supreme Civil Court, and more particularly since the seces-

sion of 1843, when a large section of the ministers and members of the Established Chuch seceded from that body, and formed themselves into a new Presbyterian society under the name of the Free Church of Scotland. I refer to the decision of the Court of Session in the case of The Presbytery of Fordyce v. Shanks, 14 July, 1849 (11 Dunlop, 1361); Presbytery of Edinburgh v. Trustees of Lady Glenorchy's Church, 4 March, 1841 (18 Jurist, 305); Bain v. Black, 17 Nov., 1846, (11 Dunlop, 1286,) affirmed by the House of Lords, 22 Feb., 1849, (6 Bell, 317.)

4. To the fourth interrogatory, I depone that in the case here put the Presbytery of the Bounds, as representing the Church of Scotland, would be entitled to claim the chapel or meeting-house, and to insist that it should be occupied exclusively for the use of a congregation in connection with the Established Church.

5. To the fifth interrogatory, I depone that any congregation ceasing to hold the doctrines of the Church of Scotland, or to remain in connection with that church, would thereby forfeit all right to the use or enjoyment of any chapel or meeting-house which was held in trust for a congregation in connection with the Established Church.

6. To the sixth interrogatory, I depone that such chapel or meeting-house would, in the case here put, pass into the jurisdiction of the Presbytery of the Bounds, so as to be held for the use and enjoyment of a congregation in connection with the Presbytery.

7. To the seventh interrogatory, I depone that the effect, in 1735, or subsequent thereto, of a congregation in connection with the Church of Scotland ceasing to be such, and changing from the Presbyterian polity into Congregational discipline and form, or changing from the doctrine of the Church of Scotland to the doctrine known as Unitarian, would be, that it would forfeit all claim to the use or enjoyment of any chapel or meeting-house held for the behoof of a congregation in communion with the Church of Scotland.

8. To the eighth interrogatory, I depone that by whatever trustees the said chapel or meeting-house might be held, the Presbytery of the Bounds would be entitled to vindicate it for the use of a congregation in connection with the Church of Scotland.

9. To the ninth interrogatory, I depone that such change as that here mentioned would dissolve the relation or connection of such congregation with the Church of Scotland.

10. To the tenth interrogatory, I depone that no change whatever, so far as I am aware, has taken place in the law of the Church of Scotland touching the matters here referred to since the year 1735.

11. To the eleventh interrogatory, I depone that I do not at present recollect of any matter or thing other than I have above

stated which may be of benefit to either of the parties, except to direct their attention to the decision pronounced by the Court of Chancery in England, and by the House of Lords, in regard to Lady Hewley's charity, which has an important bearing on this case, and on the interrogatories to which I have made the foregoing answers.

*Cross-interrogatories.*

1. To the first cross-interrogatory, I depone that I have already stated that proper parish churches in Scotland are not held by trustees, but are allodial subjects, held under common law, or under decrees of the Court of Teinds, or under special acts of Parliament, for the celebration of Divine worship in each parish. But chapels or meeting-houses in connection with the Church of Scotland, as distinguished from parish churches, are usually held by trustees for the use of congregations in connection with the Established Church, and I have already answered this cross-interrogatory by my answers to the interrogatories in chief, to which I refer.

2. To the second cross-interrogatory, I depone that I have no means of ascertaining with accuracy or certainty the precise terms of the conveyances under which such chapels or meeting-houses have been held from 1734 downwards. But in such of the conveyances as I recollect to have seen, the terms of the trust by which they were connected with the Church of Scotland were not more definite or precise than those used in the indenture of June, 1735, as to the meeting-house at Boston, of which, as already noticed, I have seen a printed copy.

3. To the third cross-interrogatory, I depone that I have revised my answers to the interrogatories here stated, and I say that the effects and results stated by me flow from the established law of the land, and not from any regulations adopted by the Church of Scotland.

J. S. MORE.

JOSEPH GRANT, *J. P.*

J. L. D. FERGUSON, *Clerk.*

Compeared, also, time and place above mentioned, Alexander Shank Cook, esquire, another of the parties named in the said commission, who being solemnly sworn and examined with reference to the said interrogatories and cross-interrogatories, depones as follows:

1. To the first interrogatory I depone, that my name is Alexander Shank Cook. I am in the forty-third year of my age. I reside in Edinburgh, and I exercise there the profession of an advocate. I have resided generally in Edinburgh, since 1827, and I have exercised there the profession of an advocate since March, 1834.

2. To the second interrogatory I depone, that I have a general acquaintance with the subjects specified in this interrogatory. The means by which I have acquired that acquaintance are the practice of my profession, both in the court of session and at the bar of the general assembly of the Church of Scotland, and the course of reading to which the occasional occurrence of cases involving such matters naturally led.

3. To the third interrogatory I depone, that I believe that, in 1735, the only meeting-houses in connection with the Church of Scotland were the proper parish churches. There was even then, with but few exceptions, owing to accidental circumstances, a parish church in each parish, set apart by the public law of the country for the celebration of Divine worship according to the doctrines and forms of the Established Church, and by a minister appointed and admitted to the benefice attached to the church, according to the laws and usages regulating the appointment of ministers of the Established Church. In the parish church the congregation had no right of property. They had the right of resorting to it for the purpose of worship, according to the forms of the Establishment; but the fabric of the church was under the joint control and management of the heritors or landholders of the parish, and of the Presbytery or local church judicatory within whose territory the parish was situated; and the expense of maintaining the fabric of the church was a burden upon the heritors. No change in the state of religious opinion in the parish, upon the part either of the congregation or the minister, could affect the destination of the parish church to the purposes of the Establishment. If the congregation, or any of them, became converts to other doctrines or modes of discipline than those sanctioned by the church, they might have disused their attendance at the parish church, but it nevertheless remained devoted to the purpose for which it was set apart by the law of the country. If, on the other hand, the minister became a convert to other doctrines or modes of discipline than those of the church, he would, as a matter of course, have been deprived of his office and benefice by sentence of the church judicatories; and thereupon another minister would have been appointed in his place, in the same manner and by the same forms as the deprived minister had been appointed, and just as if he had ceased to hold his office by death. This course of proceeding was remarkably exemplified about the period to which this interrogatory refers. In 1733 or 1734 the Reverend Ebenezer Erskine and certain other ministers seceded or withdrew from the Established Church, in consequence of doubts entertained by them as to the lawfulness (in a religious sense) of her judicatories. Every effort was made by the general assembly to reclaim them; but they persisted in their course, and were consequently formally deposed by an act of the general assembly of 1740. Their benefices and churches thereupon became

vacant, and successors were appointed to them in manner above stated.

4. To the fourth interrogatory I depone, that no change of religious opinion in the parish could affect the right to possess, or the jurisdiction to which the church was subject. It would remain in possession of the heritors and Presbytery, as a church of the Establishment, subject to the jurisdiction of the Presbytery and other church courts, in regard to all matters ecclesiastical, and to that of the court of session in regard to all civil matters affecting it.

5. To the fifth interrogatory I depone, that, in the event here supposed, the church would remain, as before, a church of the Establishment. The congregation, as already explained, do not hold and enjoy the church or land on which it is built. It is held, or, more properly speaking, it is put by the law of the country, under the management and control of the heritors and Presbytery, for behoof of any congregation adhering to the Established Church.

6. To the sixth interrogatory I depone, that it would remain in the possession and subject to the jurisdiction mentioned in the answer to the fourth interrogatory.

7. To the seventh interrogatory I depone, that I can only refer, in answer to this interrogatory, to my previous answers to the third and fourth interrogatories. It could in no way have affected the right to hold and enjoy a church of the Establishment in 1735, whether the supposed change on the religious opinions of the parishioners had been to Unitarianism or any other modification of doctrine not in accordance with the standards of the church.

8. To the eighth interrogatory I depone, that I refer to my answers to the third and fourth interrogatories.

9. To the ninth interrogatory I depone, that any change from the doctrines held by the Church of Scotland, on the part of a congregation, would lead, as a matter of course, to a dissolution of its connection with the church.

10. To the tenth interrogatory I depone, that no change in the law has taken place since 1735, touching the matters inquired of. When the great secession from the church occurred in 1843, the seceding ministers were, by an act of the assembly of that year, declared to be no longer ministers of the Church of Scotland. Their respective churches and benefices thereupon became vacant, and successors were appointed to them in manner already stated. It may be proper, however, to add, that altho' there has been no change in the law touching the matters here in question, the altered condition of the country has led, since 1735, to applications of the law in circumstances different from those of 1735, and probably more nearly analogous to those of the Presbyterian

Church in America, than were those which obtained in Scotland in 1735. Since that time the population of many parishes has greatly outgrown the accommodation afforded by the parish church. The landholders are not in such cases obliged by law to build a new and larger church except where the old church has become ruinous and incapable of repair, and accordingly in many instances it has been found necessary to resort to voluntary contributions for the purpose of providing the means of worship to that part of the population adhering to the Established Church, but who cannot find accommodation in the parish church. Churches built by such voluntary contributions may, by following the course of procedure pointed out in a recent statute, be either constituted the proper parish churches of districts disjoined from the old parishes in which they are erected, and declared to be new parishes quoad omnia, or quoad sacra merely, according to circumstances; or they may be connected with the Established Church merely as Chapels of Ease, or in aid of the parish church of the old parish, in terms of certain regulations enacted by the general assembly of 1798. The right of property in these new churches is usually, and I believe invariably, vested in trustees, to be held by them and their successors for the purpose of affording the means of worship according to the doctrine and ritual of the Church of Scotland, and in whomsoever the property of the church is vested, the terms upon which it is recognised as a church in connexion with the Church of Scotland are always specified in a document called a "constitution," which is submitted to the assembly for approval, and of which it is invariably a condition that the building is to remain in all time devoted to the uses of the Established Church. The law of Scotland enforces this destination of the church or chapel equally as in the case of one of the old parish churches. Although all the parties more immediately connected with it were to secede from the Established Church, and attach themselves to another communion, the building dedicated as above mentioned to the purposes of the Established Church must remain a church in connection with, and subject to the disposal and use of the Established Church. The proper parties to enforce this right on the part of the church are the Presbytery, or local church judicatory, within the territory of which any church or chapel in the condition above supposed may be situated; and if the trustees in whom is the formal title of the church should attempt to use it for the purposes of the new communion to which they have attached themselves, the Presbytery may, by an action before the supreme civil court, compel the application of the building to the purposes of the Establishment. Instances of this description have occurred since the secession in 1843, and as an example I may refer to the reported case of the Presbytery of Edinburgh vs. The Trustees of Lady Glenorchy's Chapel, 4 March, 1846, (18 Jurist, p. 305.) I have only

farther to add, that a similar rule would be applied by the court in the case of them eeting-house of any dissenting communion, as in the case of a chapel attached to the Established Church. Where it can be ascertained the court will enforce the purpose to which any such meeting-house has been dedicated by the original founders of the same. See the case of Craigdallie vs. Ackman and others in the House of Lords, 1 Dow's Appeal Cases, pp. 1 and 2, Bligh, p. 529.

11. To the eleventh interrogatory, I depone that nothing occurs to me as proper to be stated in answer to this interrogatory.

*Cross-interrogatories.*

1. To the first cross-interrogatory, I depone that there is no written title to the property of the old parish churches which alone were known as places of worship for the followers of the Established Church in 1735. But by the public law of the country such churches then and now were and are inalienably connected with the Established Church, while the custody and keeping of them, rather than the right of property, was and is in the heritors of the parish and presbytery of the bounds or district. This I understand to be by the common law of Scotland. The burden incumbent upon the heritors of maintaining, and where necessary rebuilding churches, has, however, been recognised and declared in various acts of the Parliament of Scotland, and particularly in the Acts 1563, c. 76, and 1572, c. 54. In the case of newly erected churches and chapels of ease, there is always a written title in the person of trustees selected by the parties who build and endow such churches or chapels. Failing such trustees, or in the event of their inverting the trust for the usages of which they hold the said buildings, the court would empower the presbytery to assume the administration.

2. To the second cross-interrogatory, I depone that I have no means of ascertaining with accuracy and certainty the precise terms of the trust deeds by which the property of the various chapels erected since 1734 is held. I have no doubt, however, that it is provided in every case that the chapel shall remain forever in connection with the Church of Scotland. No chapel could on any other terms be admitted into connection with the church.

3. To the third cross-interrogatory, I depone that the results stated by me in answer to the interrogatories herein mentioned, are results flowing from the established law of the land, and not from regulations adopted by the Church of Scotland.

ALEX'R S. COOK.

JOSEPH GRANT, *J. P.*

J. L. D. FURGUSON, *Clerk.*

All of which is humbly reported by

JOSEPH GRANT,
*One of Her Majesty's Justices of the Peace for the city of Edinburgh.*

At Glasgow, the twenty-seventh day of October, one thousand eight hundred and fifty-three, which day there was presented to Andrew Wingate, esquire, merchant, Glasgow, one of her Majesty's justices of the peace for the county of Lanark, a commission issued from the supreme judicial court of the Commonwealth of Massachusetts, dated twenty-eighth September, eighteen hundred and fifty-three, addressed to any justice of the peace legally empowered to take depositions or affidavits in Edinburgh, in Scotland, empowering such to take the depositions of certain parties therein named, to be used in a suit now pending in the said supreme judicial court, between the Attorney General, &c., by information, as plaintiff, and the Proprietors of the Meeting-house in Federal street, Boston, as defendants; of which commission the said Joseph Grant accepted, and appointed James Lothian Donald Furguson, writer, in Endinburgh, to be clerk thereto, who gave his oath de fideli administratione officii—

Compeared Alexander Hill, doctor of divinity, one of the parties named in the said commission, who being solemnly sworn and examined with reference to the interrogatories and cross-interrogatories annexed to the said commission, depones as follows:

1. To the first interrogatory, I depone that my name is Alexander Hill, and I am aged upwards of sixty years. I am a minister of the Church of Scotland, and professor of divinity in the University of Glasgow. I have been a minister thirty-eight years, and for the last thirteen years I have resided in the College of Glasgow.

2. To the second interrogatory, I depone that my profession and my inclination led me to attend very particularly to the discipline, doctrine, form of worship, and laws of tenure of the Church of Scotland, from its earliest time; and for many years I have taken a considerable share in the business of its judicatories.

3. To the third interrogatory, I depone that in the year 1735, as also before and since that date, places of worship were by law provided for those who conformed to the doctrine, discipline and form of worship of the Church of Scotland. Congregationalists, if they had been then known, could not have had a legal right to use or enjoy them.

4. To the fourth interrogatory, I depone that the parish churches or places of worship destined for the Church of Scotland cannot legally be transferred to any other society or body of professing Christians.

5. To the fifth interrogatory, I depone that the answer given to

number three applies much more strongly here, a Unitarian society being so extremely opposed in its doctrine to that of the Church of Scotland. Such a society cannot legally hold or enjoy the places of worship appropriated to the Church of Scotland.

6. To the sixth interrogatory, I depone that the places of worship destined for the Church of Scotland can be held and enjoyed only by those who maintain its doctrine, discipline, and form of worship.

7. To the seventh interrogatory, I depone that there is no doubt that the law of the Church of Scotland in 1735 would have required that steps should be taken to deprive of the rights and privileges of members of the Church of Scotland, any society, parish, or congregation which adopted the Congregational discipline and form, or changed from the doctrine of the Church of Scotland to the doctrine known as Unitarian.

8. To the eighth interrogatory, I depone that the place of worship, and the ground upon which it is built, would remain for the use of the Church of Scotland.

9. To the ninth interrogatory, I depone that the connexion between the Church of Scotland, and the party changing its doctrine and discipline, would be dissolved.

10. To the tenth interrogatory, I depone that no change has taken place.

11. To the eleventh interrogatory, I depone that I know of nothing, except the cases referred to, in answering the cross-interrogatories.

*Cross-interrogatories.*

1. To the first cross-interrogatory I depone that no legal title to lands occupied as places of worship by the followers of the Church of Scotland was required in the year 1735. The proprietors in parishes were made liable by statute to provide and uphold places of worship for the Church of Scotland. In later times, when chapels of ease and Quoad Sacra churches have been erected in connexion with the Church of Scotland, it has been usual to vest them in persons or bodies of men; and recent adjudged cases leave no room to doubt the validity of the tenure by which they are held, or the necessity for the doctrine, discipline and worship maintained in them being conformed to the doctrine, discipline, and worship of the Church of Scotland. See cases of Quoad Sacra churches in Glasgow and elsewhere; St. Peter's Church, Manchester, and other decisions of Vice Chancellor Knight Bruce. See also analogous cases of Lady Hewley's Charity in North of England; Dissenting Church in Campbeltoun; Dr. Marshall's Church, Kirkintulloch.

2. To the second cross-interrogatory, I depone that it is already answered.

3. To the third cross-interrogatory, I depone that I have carefully revised my answers to the fourth, fifth, sixth, seventh, eighth

and ninth direct interrogatories. I consider the results stated to flow from the established law of the land.

ALEX'R HILL.

ANDREW WINGATE, *J. P.*

J. L. D. FERGUSON, *Clerk.*

All which is humbly reported by

ANDREW WINGATE,
*One of Her Majesty's Justices of the Peace for the County of Lanark.*

*Dr. Forsyth's Testimony.*

I am a clergyman of the Synod of the Associate Reformed Presbyterian Church, and professor in the Theological Seminary at Newburgh. It is the seminary of that church. I was educated partly in this country, and partly in Scotland. My theological education was obtained chiefly in Scotland. I am a member of the Presbytery of New York, and of the Synod of New York.

I know the Rev. Alexander Blaikie. He has been a regular attendant at all the meetings of the Presbytery (of New York) since 1846. I think that was the earliest of his attendance or membership. He was a member of the Synod previous to that from another Presbytery. I think he became a member of the Synod in consequence of membership of another Presbytery in 1835 or 1836. He became a member of the Presbytery of New York in 1846 or 1847; I am not precise as to the exact year. I have officiated at his church in Boston on two occasions—on last Sunday, and in the month of November, 1853.

Ques. Has the Church of Scotland any jurisdiction over your Presbytery?

Ans. No, sir.

This was objected to by Mr. Bartlett.

Mr. Dana. I put the question, whether the Church of Scotland ever had, out of Scotland and in the United States of America, any jurisdiction.

Mr. Bartlett stated the nature of his objection to be that the witness can tell no more upon this point than can be ascertained of the facts by reading in those books which are put into the case.

Ques. How long have you been in knowledge of the state of the jurisdiction of the Scottish Church?

Ans. I have no ecclesiastical knowledge of it, but I know as a historical fact that the Church of Scotland can have no jurisdiction out of Scotland, and never has had any in the United States.

Ques. How far does your personal knowledge extend in relation to this subject?

Ans. Since the commencement of my theological education in

1833. In point of fact there has been no such jurisdiction within my knowledge.

Ques. Why cannot the Church of Scotland have such jurisdiction?

These questions and replies were objected to by Mr. Bartlett on the ground that the witness was not competent to testify, except as to what comes within his own personal knowledge.

The Court. He is speaking now of his own knowledge of his own church.

Mr. Bartlett. If it is simply whether his own church can be controlled by any such authority, I do not object.

The Court. What is your answer?

Witness. My answer is, that the Church of Scotland has no jurisdiction over any church in this country.

I am professor of Church History and of Church Government. I have made it a study since 1833, and my more particular study for the last ten years. I have some historical knowledge of the facts in relation to the usages of the church on the subject of jurisdiction, from the reading of the proceedings of the Church of Scotland—of the general assembly of the Church of Scotland, and the acts of the Church of Scotland. I put my assertion that the Church of Scotland can have no jurisdiction in this country on the ground that I can point to the act of the general assembly refusing to take jurisdiction in England, and other portions of the world, and because I can point to two acts in which two cases are specified, forming exceptional cases; they being the only two, and having long since ceased.

Objections were interposed to this line of testimony, and a discussion took place.

Ques. How does the Collection of Stewart—the Pardovan Collection—stand as an authority?

Ans. It is one of the authoritative books of Presbyterian law among all the Scottish churches with which I am acquainted, from the fact that it consists merely of references to the acts of the church. It really is of the nature of a digest of rules already laid down.

Of Hetherington's History of the Church of Scotland, I can only speak in regard to my own convictions of its historical worth and accuracy. It is a book of very general circulation, and is considered trustworthy as a historical authority.

The book of Confessions of Faith, Catechisms, &c., published in Edinboro', in 1725, contains the offices and discipline of church government, the doctrines and order of the forms of worship of all Scottish churches, and of the Church of Scotland.

These particular volumes, (Acts of the General Assembly of the Church of Scotland,) are the mere printed records of the Acts of the assembly—printed by the authority of the assembly itself, and

are invariably referred to like the statutes of your own State, Massachusetts.

This book [another book being handed to the witness] is the Confession of Faith, the Catechisms, Discipline, and Worship of the Associate Reformed Church of the United States, and is of the highest authority in the church under the Scriptural authority. It is the authority of the Synod and Presbytery of New York at this time.

Mr. Dana. The book is the constitution and standards of the Associate Reformed Church in North America, published in Pittsburgh in 1850.

Witness continued. This book has been the same—that is, there has been no change within my own personal knowledge since my entrance into the ministry. By comparing the editions published in 1834 and since that time, I find them to be identical. They are also identical with the old book, with the exception of a single chapter, which has reference to civil government. This work was adopted on the 31st of May, 1799, and several editions have been published, which show that there has been no change since that time.

Ques. By the usage and discipline of the Presbyterian Scottish Church in this country, what authority do the pew-holders in a church have over the church?

Witness. As pew-holders, they are not known to or recognised by the church. They have no voice in choosing a pastor, ruling elder, or deacon, nor generally in any question relating to any matter of religion, public worship, and doctrine. The only recognition by our discipline and usages of pew-holders—that is, of those pew-holders who are not communicants—is, that in case of a call of a pastor of the congregation, they are at liberty to append their names to the call after the election has taken place.

The Associate Reformed Church in this country springs from the Church of Scotland. Its symbols of doctrine, forms of worship, and mode of government are the same as those of the Church of Scotland.

There are other branches of the Presbyterian Church in the United States of Scotch origin, and holding to a certain extent the same Scottish symbols that we do. The Reformed Presbyterian is one of those branches, and another is the Associate Synod.

I do not know that either of the branches I have mentioned hold any connection with the Scotch churches. I know of no such connection.

Ques. Do either of these branches you have spoken of conform as nearly as yours to the Church of Scotland?

Ans. So far as forms of worship, modes of government, and leading points of doctrine are concerned, they are identical with us. The difference between these branches has arisen from out-

ward acts of administration, and not from difference of doctrine. Hence they all recognise the same standards.

Ques. As a matter of administration, sir, with reference to the standards of the Church of Scotland, which of these branches, yours or the others, approaches nearest to the Church of Scotland?

Ans. So far as discipline is concerned, they are alike. The differences between them arise out of acts of administration, and not from differences of doctrine, as I said before.

Ques. Well, sir, I will take the word "administration" in your own sense. You said there were differences from acts of administration, and what I wish to know is, whether the Associate Reformed Church is nearest to the Church of Scotland in this respect.

Ans. At the formation of the Synod they laid aside these differences of administration—the old differences, or rather the questions out of which they have *arise*, and placed themselves upon the original basis.

There is a Presbyterian organization known as the General Assembly, which is still after the Scotch pattern in its leading features. The same standards are adopted by the general assembly, with the exception of one or two articles of faith in reference to civil government. Their discipline differs somewhat from that of the Church of Scotland. The organization is called the General Assembly of the Presbyterian Church of the United States. The difference in reference to discipline is greater than in matters of doctrine. They have departed in discipline from the Scotch Church in this, that in the general assembly, according to the Scottish discipline, is embodied the whole church; and that is not the case in the general assembly in the United States. Here it is simply a representation of Presbyteries, and such powers as the Presbyteries choose to give—that is, a body with delegated powers, as well as of delegated persons. The powers of a Synod or a Presbytery in this country are essentially the same as those of the Scottish Church. The main difference is in the powers of the assemblies.

There is another point of difference in regard to the worship. The Scottish Church, and all churches connected with the Church of Scotland, are required to use a particular version of the Psalms, popularly known as Rouse's version, and sometimes as the Scottish version. It is used by our Synod, and always has been, to my knowledge.

Ques. What is used in the churches in connection with the General Assembly of the Presbyterian Church of the United States?

Ans. I do not speak of my own knowledge further than where I have worshipped. They use Dr. Watts' version, together with the collection of hymns.

Ques. In the common speech of Presbyterians, what would be understood by the term "Scotch Presbyterian Church" in America?

Ans. In those portions of the country where the phrase occurs,

it is understood to imply the churches of Scotch origin. It is so understood in New York.

Ques. Is there any church in this country generally known as the Scottish Church—in any portion of the country?

Ans. Where I reside, and where I am acquainted—in the State of New York—our church is so known. Our clergy trace their ordination from the Church of Scotland.

Ques. What is the usage of the Church of Scotland and of the Associated Reformed Church in this country, or in what do they differ in regard to male members voting?

Ans. None but male communicants are allowed to vote in the Church of Scotland, or in the Associate Reformed Church in this country; that is, so far as the right of voting is employed. They have no absolute right of voting, except in making out a call for a pastor. That call is signed by the male heads of families in communion, in the Scottish Church, and our church has taken the same rule. In the Scottish system in the United States of America, none but the male members in communion have the right of voting; that is, so far as the right of voting extends. If there is any, it is vested in the male members in communion, and none but them.

Ques. In the general assembly of the United States, pew-holders have a right to vote—have they not?

Ans. Yes, sir. I speak of the Old School, as a matter of my own knowledge, from having exercised the right myself. There are two general assemblies in the United States, the Old School and the New School. Within my own personal knowledge, this right of the pew-holder to vote has existed within the last eight years. I only speak of this right as now existing within the last eight years, but from my own knowledge, as a matter of history, the right dates mach earlier than that.

Ques. According to the doctrines of that church, and as to the right of pew-holders to vote, is this right subject to the permanent law of the Presbyterian Church, in matters of doctrine, or not—that is to say, can the pew-holders in a particular parish, by vote, establish a point of doctrine or discipline, at variance with the received law and practice?

Ans. The Presbytery would have the right to interfere according to all Presbyterian rules. If a question of doctrine arose in any Presbyterian congregation, the case would be carried up to the Presbytery having jurisdiction over that church, and it would come before them for decision. Their decision would be paramount to the act of the pew-holders, or congregation.

Ques. by the Court. Suppose the congregation did not wish to submit to this decision, what then?

Ans. They could carry it to the next highest tribunal, which would be the Synod; and if the decision of the Synod should be against their wishes, they could carry it to the general assembly;

and if they felt dissatisfied with the decision of the general assembly, their only course would be to leave the communion of the church. I speak of them in relation to leaving the church, only as individuals, of course. In point of Presbyterian law, there is no higher court to which they could appeal, and the decision of the general assembly would be final.

I have examined the various records put into this case, those of the New York Presbytery, Presbytery of Londonderry, and Presbytery of Boston; that is, I have looked over them very cursorily, and, so far as my observation has extended, they were kept in the usual form of Presbyterian records. I have copied a page or two, and in that way I know certainly of one or two portions. They were kept in the usual form of Presbyterian records.

Ques. by Mr. Adams. In regard to the rights of pew-holders in Scotland, what are your sources of information on that subject?

Ans. My knowledge on the subject arises partly from books, partly from intercourse with pew-holders, or heritors, as they are called in Scotland, and partly from causes which occurred during my residence in Scotland. I was in Scotland in 1832 and 1833, and again in 1846.

Mr. Adams. Well, sir, what is the practice? What is the usage, custom or law of the Scottish Church in Scotland in regard to holders of seats in churches?

Ans. The usage differs. In country parishes the area of the church is divided into sittings among the landed proprietors, according to the amount of their land in the parish. The only control they have of the seats, is for the accommodation of their families or dependants. They can exercise no power over the church, in the way of controlling its religious faith or religious action. If not members of the Church of Scotland themselves, they still retain the power of allocating (as they call it in Scotland) the seats for their tenants; of sub-distributing their pews, or allotting them among their tenants. The Scotch term is allocating. If the heritor is a Church of England man, or not of the church connection, though still retaining the right of allocating, he would have no power to transfer the church to another denomination.

It sometimes happens that all the sittings in the church belong to one man. The Marquis of Breadalbane and the Duke of Buccleuch are cases in point. There may be others, but these are two cases which occur to me, at the present moment, of single individuals owning all the land in the parish, and therefore being the only heritors. They are the sole proprietors of the seats in the parish church. The Duke of Buccleuch is a member of the Church of England. The Marquis of Breadalbane is a member of the Free Church of Scotland. He left with the Free Church in 1843, still retaining his rights as a patron, and his right of distributing the

seats among his parish tenants, but having no control over the religious affairs of the church. The same remarks apply to both the Marquis of Breadalbane and the Duke of Buccleuch. The Duke of Buccleuch has always been a member of the Church of England. Another instance occurs to my mind, coming within my personal knowledge—Mr. Urquhart of Meldrum. He is a member of the Church of England and the largest heritor in the parish of Meldrum, and is patron of the parish likewise, but has no control over the church, as to its religious forms, more than in the other cases.

Ques. When the Marquis of Breadalbane joined the Free Kirk, or Church, of Scotland, did any of his tenants go with him?

Objections were here urged that the witness could not testify to the fact from his own knowledge.

Ans. I do not know of my own knowledge, not having been in the parish at the time, but I know it from intercourse, in 1846, with those who were acquainted with the facts. When in Scotland, in 1846, I worshipped in churches (not those of the Marquis of Breadalbane) with which I had worshipped when there before, and they were comparatively deserted, many worshipping in other parts of the parish. In the parish of Meldrum the great mass of the worshippers had left. A small portion only still remained. Previous to this disruption in 1833, they all worshipped there in the old established parish church of Meldrum, but in 1846 the great majority of the congregation, having adopted the principles of the Free Church, were then worshipping in a new church.

The witness continued: In regard to the case of these congregations of the Marquis of Breadalbane, I do not know the facts of myself, as I was not there at the time of their leaving. I only know by intercourse with others. They worshipped at one time with the parish church, and afterwards left it and worshipped with their own.

Ques. Did you when in Scotland see any church of the established Church of Scotland deserted, or left with but few worshippers?

Ans. I cannot say that I saw one entirely deserted, myself. The strongest case that fell under my own personal knowledge is the one I have mentioned, in Meldrum. There was one church in the city of Aberdeen that was shut up when I was there. I was not in it on the Sabbath, and therefore I cannot testify how many or how few worshippers were there. I only know the fact, as a matter of common report, when I was there, that it was shut up.

Ques. by the Court. In these cases you speak of, where patrons hold the right of allocating the seats, who makes the call for a pastor?

Ans. The first step is, that a minister receives a presentation from the patron; that is laid before the Presbytery, and the pre

sentee, as he is called, is directed to preach once or twice, on a day fixed by the Presbytery. There is then an election, though a nominal one, but a call is made out, and signed by all the members. They appoint an election in the congregation, and the forms of an election are gone through with. This was the case till within the last few years. By a law called Lord Aberdeen's Act, (in 1844) commissioners have a power of rejection. The first step is the presentation by the patron to some clergyman. This is laid before the Presbytery. They appoint an election; a written call is made out according to form, and is signed by all the male members; or they refuse to sign, making their objections. In the latter case, it is laid before the Presbytery, who decide whether the objections are valid. If the objections are set aside, of course he is ordained. If they are sustained, he is rejected.

There are two or three parishes in Scotland where there are no patrons. The laws and usages would apply in those parishes in the same way as in this country. The same forms would be gone through with as in the other case, except that, as there is no patron, of course there could be no presentation. The congregation would ask the Presbytery to appoint an election. Candidates would be named, and the person who received the majority of votes would obtain the election. The pew-holders or sitters not in communion would have no right to vote.

Ques. Would these pew-holders or sitters [It was agreed to call them sitters] in the Church of Scotland have any right to interfere in the call of a clergyman?

Ans. Except in Chapels of Ease, or a part of them. They would have in no other congregations except two, or possibly three, in which there is no patron; or, in other words, the right of election being wholly in the power of the congregation in these cases, the election is wholly by the male members in communion.

Ques. How is it with Chapels of Ease; would sitters in them, not communicants, have any voice in the call of a clergyman?

Ans. I can scarcely answer that question, for this reason, that the Chapels of Ease get their constitutions from the general assembly, and all their rules are regulated by their constitutions, which may vary. I am not, therefore, able to speak positively of them. There is no special government, but each congregation has its own constitution, as it is called, which regulates these matters.

Ques. What is the origin of Chapels of Ease?

Ans. They are intended to supply the deficiency of the parish church, where that is inconveniently situated, or too small to accommodate the whole population. They are built by the congregations themselves, as our churches are, and their ministers are chosen by the congregations themselves.

Ques. Of how recent formation or origin are these Chapels of Ease?

Ans. The first Chapel of Ease was instituted about the middle of the last century. There are only some 200 of them now.

Ques. Within your knowledge, is there any instance of a Chapel of Ease in which a sitter, not a communicant, would have a voice in the choice of a clergyman?

Ans. No, sir.

Ques. Supposing what you call the area is all distributed to the different heritors, and the congregation, formerly of a hundred, should suddenly become increased to two hundred, how would this new hundred be accommodated in the church?

Ans. It would depend upon circumstances. There might be a Chapel of Ease. If the additional one hundred were such an addition to the tenantry of the heritors, they would each re-divide his own sittings.

Mr. Adams. In churches belonging to the Associate Reformed Presbyterian Church, what voice have sitters, not communicants, in that church in the choice of a clergyman?

Ans. None, in this country. They have no voice in the election of pastor. They may, however, append their names to the call.

Ques. What voice have they in any church matters?

Ans. None.

Ques. How long, from your historical studies, and from your own observation and knowledge, has this state of things existed in the Associate Reformed Church—that the sitters, not communicants, have no voice in church affairs?

Ans. It has always been the rule within my own knowledge; I have always heard it represented to be the rule, and all our books that I have looked into, on the subject, state it to be the rule.

Ques. How is it with every other form of a Scotch Presbyterian Church in this country except the Old School, in regard to the interference and action of sitters, not communicants, in any and every one of these churches?

Ans. The same rule obtains uniformly, with the single exception that in two of them female members are allowed to vote, which is not the case in the Associate Reformed Church, or in Scotland. When I speak of members in this connection, I mean those in communion. This has always been understood to be the rule, because it was derived from our common mother, the Church of Scotland.

Ques. What are these two exceptions where the females are allowed to vote?

Ans. The secession of the Associate Synod, or commonly known as the Secession Synod, and the Reformed Presbyterian, popularly known as the Propagandist Synod.

Ques. Where do such associations or societies exist?

Ans. Mostly in New York, Pennsylvania, Ohio, and the Western States. I am not aware of any in New England. There are, however, two or three Covenanting congregations in Vermont, along the borders of New York. There are none in Massachusetts that I am aware of; there may be, but I am not aware of any.

Ques. Your examination yesterday leaves a little obscurity in regard to the origin of what is known as the Associate Reformed Presbyterian Church in this country. Will you be good enough to explain to the court how that association was formed, and what were the different elements which composed it?

Ans. The church in its present form was established in 1782—that is, the Synod was then established. It was composed of various portions of the Church of Scotland which had migrated to this country during the colonial times, bringing with them their several party views on those points about which they had differed in the old country. These differences were questions growing out of this exercise of the power of patronage and of the relation of the church to the State. They all held the standards of the Church of Scotland, the doctrine, discipline, and worship, including the catechisms of that church, and they all claimed to be parts of the Church of Scotland. They brought with them the modes of electing clergymen or pastors; I include that in the terms discipline and government. After the Declaration of Independence, these questions which arose in Scotland were supposed to have no application in this country, and the consequence was that these various parties, some of them members of the Old Church of Scotland, some of the Secession church, and some of the Covenanting church, united on the original basis of the standards of the Church of Scotland, which they had all along recognised, laying aside those questions which had previously divided them. A union was begun in 1776, and continued several years, until it was completed in 1781, or 1782. I mentioned 1782, because there were some Presbyteries which came in that year under the union, but the union was actually formed in 1781. The Synod first met in October, 1782.

Ques. The question of patronage being out of the case in this country after the Declararation of Independence, how did the Associate Reformed Presbyterian Church, this new congregration, stand as compared with the ancient Church of Scotland?

Ans. It held and holds the same ground, so that the standards of the Church of Scotland, in reference to doctrine, discipline, and worship, are the same now as ours—are ours.

Ques. What then was the difference, after this association was formed, between the Associated Reformed Church and the other combinations of churches, or rather the different churches which were not formed into this union, this united body?

Ans. They united upon the same standards formed——

The Court interrupting: I understand that if any difference has grown up it is since 1782.

Witness. I should first remark that there were a few on each side—some Seceders and some Covenanters—who still retained their views, and would not come into the union. They are still in existence, and have drawn to each of them a body, retaining their former distinctive views.

To the Court. Those that did not come into this union were one or two parishes on the one side and a few individuals on the other.

Ques. When did these differences which existed here in colonial times have their origin among churches of Scottish origin?

Ans. They had their origin in Scotland. One of them—that of the Covenanters—originated in 1690, or rather in 1688, at the time of the Revolution. It grew out of the Revolution itself. The other originated at from 1733 to 1741.

Ques. What was the peculiarity of the first?

Ans. That commencing in 1688 grew out of the settlement, or re-settlement, of the Presbyterian as the established Church of Scotland. It arose from differences of opinion in regard to the Act of William III. Some thought the act did not go far enough in the way of recognising the Divine origin of the Presbyterian government, and those who held that opinion refused to come into the establishment, and were known subsequently in history as the "Covenanters." The second difference originated in 1733, or between 1733 and 1741, and grew out of an act of the general assembly in regard to an individual, Mr. Ebenezer Erskine. A censure was inflicted upon him for preaching a sermon in which he reflected upon some of the public transactions of the time. This was called the Secession.

Question by the Court. What was the principle of this second difference? Why did Mr. Erskine leave or deny the jurisdiction of the Church of Scotland?

Ans. In consequence of the censure inflicted upon him, which he considered to be unjust, for the sermon he had preached reflecting upon some of the acts of the time. There was no difference of doctrine, or worship or government. He still claimed to be, as the acts of the time show, a member of the Church of Scotland. He did not leave the church. The original cause of difference was the act of the general assembly inflicting a censure upon him for the sermon he preached reflecting upon those public transactions.

There was another difference from the Church of Scotland which occurred in 1757, but I believe that was never brought into this country. There was no other that was brought to this country.

Ques. In regard to the Old School Presbyterian general assembly, which I understood you to say was of Scottish origin?

Witness. It is only so in part.

Ques. In what part?

Ans. I can only answer the question by stating in some measure the origin, and something of the ministers who established the first Presbytery, in the early part of the last century, in 1700 or 1701, I cannot name the precise date. That Presbytery was composed of one Scottish minister, (or Irish, it is uncertain which,) some ministers from England, and others from New England. From that Presbytery has grown a general assembly. Its name has always been the Presbyterian Church of the United States, since the United States existed; previous to that, its name was the Presbytery of Philadelphia, until it became the Synod of New York and Philadelphia, growing out of the increase of that church. The Synod of New York and Philadelphia was formed about 1720 or '30—I am not quite certain of the date. Up to that time it was called the Presbytery of Philadelphia, and after that time the Synod of New York and Philadelphia. The Presbytery of Philadelphia was divided into various Presbyteries and then increased into the general assembly. In 1786 or '7 they took the name of the general assembly.

Ques. In what does this general assembly differ, or has it from the beginning differed, from the Associate Reformed Presbyterian Church or the Church of Scotland?

Ans. It differs in the first place in regard to worship—to form of worship. In Scottish churches all the congregations are by ecclesiastical law required to use particular forms of worship, particular versions of Psalms. In these Presbyterian churches each congregation is allowed to use what it pleases. In the second place there is a difference in the government as to the powers of the assembly.

Ques. What is the difference there?

Ans. I can only state in a word that the difference generally is simply this, that the Presbyterianism of the general assembly is regarded as a feeble sort of Presbyterianism, with an independent government, without entering into particulars. In the third place there is a difference as to the power of election, as to those with whom the power of election is lodged in the choice of pastors, or what may be called spiritual officers. In the American Presbyterian Church this power is extended to pew-holders, or ordinary hearers; in the Scotch churches it is confined to members of the church proper.

Ques. Has it always been the case in the general assembly that sitters or pew-holders, not communicants, have a right to vote in the election of officers?

Ans. So far as my knowledge extends, and I am speaking of my own knowledge, that has been their rule.

Ques. In your ecclesiastical studies and reading in regard to the doctrines, or laws rather, regulating the Scottish churches, and churches of Scottish origin, what books have you considered of authority?

Ans. The Confession of Faith, Acts of Assembly, Pardovan's Collections, Erskine's Institutes, and all the laws of Scotland, in so far as they relate to ecclesiastical matters. I do not think of any other work at the moment.

Ques. Of what authority are Bell's Illustrations?

Ans. I cannot speak on that point.

A small book was then handed to the witness, who said he was acquainted with the work itself, though he never saw that edition before; it was the confession of faith of the church to which he belonged.

*Cross-examination by Mr. Hillard.*

The Presbyterian Church of the United States was formed in 1703, or about that time. The Westminster Confession of Faith was adopted as a standard about 1729, I think. I am not certain as to the precise date. About 1741 the New York and Philadelphia Synod was divided into the New School and the Old School churches, and that connection continued about 17 years. They united about 1758, or about 17 years after the separation.

Ques. At that time—at the time of their union—is it or not true that the 20th, 21st, and 23d chapters of the Westminster Confession were expunged, in whole or in part, as a standard of belief or faith?

Ans. I am not able to speak as to the extent of the action in regard to those chapters. There was some action at that period; what it was I am not able definitely to say. They were partially altered. The chapters related only to the powers of the civil magistrate.

Ques. What is the extent of your knowledge upon that subject? It is an important fact in the history of the church.

Ans. My knowledge is that there was action, but without referring to the words I cannot state what it was. There was exception taken to those chapters in reference to the powers of magistrates.

Ques. To the best of your knowledge and belief, were not those chapters, if not expunged, at least essentially modified?

Ans. Yes, sir; they were not required. They were not important, and whatever was the action they were not left as they stood in the original confession. The first general assembly was established about 1778.

Mr. Hillard then read from page 363 of a book published in Utica, N. Y., called a "Confession of Faith." (Dr. Forsyth said it was the confession of faith of the general assembly, and not of

the Associate Reformed Church.) "The general assembly shall bear the title of the General Assembly of the Presbyterian Church of the United States of America." He then asked:

Was not that confession the doctrine and faith of the Presbyterian church before the great schisms of 1837 and 1838?

Ans. Undoubtedly it was—of that church.

Ques. About the beginning of this century, did not a party arise, called the Cumberland Presbyterians or Secession, occupying a middle ground between Calvinism and Presbyterianism?

Ans. Yes, sir; they have continued to increase in the West, and are to be found for the most part in the valley of the Mississippi.

Ques. Up to this great schism, did not these churches recognise the authority of the general assembly?

Ans. No, sir, they did not. In 1837 and 1838, there was a wide and general division of the Presbyterian church connected with the general assembly, into the New and Old Schools. It arose partly from points of doctrine, and partly from points of administration. The doctrinal differences were differences of construction and prominence of the standards of faith, the language of which each admitted. Since that time there have been two bodies, both claiming to be the general assembly?

Ques. Both claim to be the legitimate decendants or representatives of the Kirk of Scotland, do they not?

Ans. No, sir, they do not.

Ques. One thing further. Does the Associate Reformed Synod, which I understand is the congregation to which you minister, teach, or recognise the authority of the general assembly?

Ans. I am not pastor of that assembly.

Ques. Does the Associa e Reformed Synod, about which you have testified, recognise the authority of either of these general assemblies?

Ans. No, sir, they do not.

Ques. Is it not a plain and palpable departure from the doctrines, discipline, and government of the Kirk of Scotland that does not recognise this authority?

Ans. We think not. The reason why I say so is, that the Associate Reformed Synod were never in any way under the jurisdiction of the Presbytery or Synod of Philadelphia, out of which these assemblies have grown. That Presbytery or Synod came partly from England and partly from New England; while the churches of which the Associate Reformed Church is the representative, came exclusively from Scotland—from Scotch Presbyterianism. The relation is the same as that between the Reformed Dutch churches in New York and New Jersey, and the adjacent churches that are popularly known as Presbyterian.

Ques. How do you explain that belief or opinion with this express statement in the Confession of Faith that the general assem-

bly "shall bear the title of the General Assembly of the Presbyterian Church?"

Ans. It is not our book. It is not the book of the Church of Scotland. It is the book of a body which bears the name of the Presbyterian Church.

Ques. Is not the Church of Scotland incomplete and impossible to be conceived of without a general assembly?

Ans. It is incomplete without a supreme judicature, whether it bears the name of General Assembly or Synod.

Ques. I refer to the substance. I understand you have in the Scottish Church four degrees of gradation—the Congregation, the Presbytery, the Synod, and the General Assembly—all ascending, and in some cases an appeal lying from one to another. A general assembly gathers in to itself all the scattered threads of discipline and government in the church, does it not?

Ans. Yes, sir.

Ques. Now I ask, if the general assembly stands in the same relation to the Synod as that in which the Synod stands to the Presbyteries under it, whether a general assembly is not an essential part of the church?

Ans. It is de facto. It is not de jure, by that name. It is an essential part practically of Scottish Presbyterianism that there should be a judicature above the presbyteries and sessions, but whether there should be an assembly depends upon circumstances, upon the condition of the churches, and the number of the churches. It is an essential thing that there be a court of last appeal. In the Scottish churches in Canada they have no general assembly. They have Presbyteries and Synods, but no General Assembly, yet they are Scottish churches. The reason assigned for not having a general assembly is the limited number of churches. The Synod exercises all the power of a general assembly.

Ques. In Scotland itself, Dr. Forsyth, has a Synod ever exercised the powers exercised here by the Associate Reformed Synod? Is the Synod ever a tribunal of ultimate appeal?

Ans. I think not, in the Established Church. There have been Synods, however, that have exercised these powers, in the Scottish Church in Scotland, in point of fact.

Ques. Was there not an appeal to the general assembly, if any any one chose to take it?

Ans. Yes, of course, so long as the assembly was about to meet. There were times, however, when the general assembly could not meet, and in these times the Synods have exercised the powers of a general assembly, but usually cases were not finished before they reached the general assembly.

Ques. In the Associate Reformed Church, the Synod is the highest court, is it not?

Ans. No, sir; we have a body bearing a relation to the general assembly, under the name of the General Synod. That body has

been called into existence. There are four Provincial Synods under this General Synod. It is organized in precisely the same manner and under the same authority as the general assembly in the Church of Scotland. The rules and regulations are in the book of discipline, and in that book the powers are all laid down of the Presbytery, the Synod, and the General Synod or General Assembly. The General Assembly of the Church of Scotland is constituted by representatives from the Presbyteries, the Universities, and the Royal Boroughs or Burghs. These Universities and Boroughs grow out of the Established Church. The Crown is present by royal commissioners.

Ques. What is the organization and mode of election of your General Synod?

Ans. The General Synod consists of representatives of the Presbyteries alone. It first met in 1804.

Ques. Are the powers exercised by the General Assembly of the Kirk of Scotland identical with those exercised and lawfully to be exercised by this General Synod, the difference between the institutions of the two countries excepted?

Ans. Yes, sir.

Ques. Do you or not consider that in not having a general assembly, you have departed from the discipline and government of the Kirk of Scotland as it was in 1735?

Ans. No, sir, except in mere form or name. I consider the General Synod to be the exact representation of the General Assembly.

Ques. Do not a great majority of the Presbyterians in the United States, in point of fact, hold a different opinion?

Ans. I cannot speak for them.

Ques. You have testified to a great amount of history and of opinions in the direct examination.

Ans. I can testify of the prevailing opinions as to the powers of their assemblies.

Ques. Is not your body in some measure regarded as Presbyterian Protestants, or Seceders?

Ans. They sometimes bear that name, from the fact that a part of that body came into or united with our church. There is a dis- body which bears that name, having many churches in the west and south.

Ques. I ask if your particular Synod, or the Presbyterian congregations who compose it, are not regarded by the majority of the Presbyterians of the United States, who recognise the general assembly as being in some measure Seceders or Protestants?

Ans. No; but in different localities the term is used. If the question is put in a general form as to the name by which they are generally known, I should say it is the United or Associated Church, or the Scotch Church. All these terms are used.

Ques. Is it the opinion generally of the Presbyterian denomina-

tion of the United States that it makes no difference whether there is a general assembly, or a body called a Synod?

Ans. The Presbyterians generally do not regard an assembly called by that particular name as an essential part of Presbyterianism. That Confession of Faith, [the book referred to by Mr. Hillard in the beginning of the cross-examination] is correct so far as it goes. I do not mean to say that its declarations are of no consequence in regard to a general assembly; I say it cannot be true in Mr. Hillard's sense, because there was no general assembly after 1828. By the increase of the church it was necessary to subdivide that Synod into a General Synod, and it states a fact, not a principle. There was a general assembly in Scotland, originally. The progress and agencies of Presbyterianism in Scotland and in this country were just the antipodes of each other. Then the general assembly formed the Synods, and they the Presbyteries; here the Presbyteries are first formed and grow into Synods, and these enlarging, from a General Synod or Assembly.

Ques. I would ask you, Dr. Forsyth, whether in your opinion an ecclesiastical authority of any name or character, in Scotland, would say that a congregation which holds its church according to the tenures and after the manner in which the churches of Scotland hold and enjoy their lands on which their meeting-houses are erected, when such congregation does not recognise the authority of the general assembly?

Ans. If you mean a congregation in America, then I answer the question, yes, it can.

In 1735 there was no ecclesiastical connection between the Kirk of Scotland and the church in this country. No appeal could lie.

Dr. Forsyth here explained a previous answer to the question in regard to tenure. He had answered "yes," and he should have added that his answer would depend upon the legal meaning of the word "tenure."

Mr. Hillard said it was not easy even for those who made the law their study to give a satisfactory definition of the term.

The witness continued:

The general assembly is an incorporated body—that is, it has an act of incorporation which was granted by the State of Pennsylvania, long before the controversy of 1837.

*Cross-examination continued by Mr. Bartlett.*

I am 42 years old. I was educated partly in this country and partly in the old. I was educated at Newburg up to 1826, and from that time to 1832 at Newburg and New Brunswick, New Jersey. In 1832 and 1833 I was in Edinburg, Scotland. I remained in Scotland between one and two years. Most of my time I spent at the Universities of Aberdeen and Edinboro'. Soon after my return to this country, I was ordained to the ministry, and settled as a pastor in Philadelphia, over the same sect with which

I am now connected. I remained there until 1838, and from there I was called to Newburg in connection with the congregation there. I was there till 1847, and then went to Princeton college. I was connected with the college from 1847 till 1852, as professor of Latin and history. Thence I returned to Newburg and became connected with the Theological Seminary there, as one of the professors. All I have testified to in relation to this matter has been derived from my studies, and my experience and observation while abroad.

To the court. I was abroad again in 1846, and staid about six months, about one month of which I spent in Scotland.

*Direct Examination resumed.*

I have professed to make ecclesiastical history a subject of study for the last fifteen years.

Mr. Adams here exhibited two books, one of which was that upon which Mr Hillard had cross-examined the witness, and asked him what the difference was between those books.

Ans. One book contains the discipline, government, and worship of the Associate Reformed Church, and the other contains the same in part, but not in form, or words. There is no connexion between these two bodies as to a standard.

Ques. Whether or not is the general assembly of the Old School church in this country in unity with the Kirk of Scotland general assembly in regard to its character, powers, influence, and government and direction over members?

Ans. It is not. That is to say, the powers of the Old School assembly are not as full; the members have only the powers delegated to them.

*Deposition of Dr. McGill.*

Rev. Robert McGill, of Montreal, in the province of Canada East, Doctor of Divinity:

1. Please state your age, profession, and place of residence and birth.

Ans. I am 55 years of age and upwards. I am a clergyman. I was born in Scotland, and reside in the city of Montreal, in the province of Canada East.

2. How long have you resided in Canada, and of what congregations have you been pastor, and at what dates and how long have you been a Doctor of Divinity?

Ans. I have resided in Canada since Oct., 1829. I was pastor of St. Andrew's church in Niagara, a Presbyterian church in connection with the Church of Scotland, from 1829 till Oct., 1845. I removed to Montreal in 1845, and from that time to the present I have been and am still pastor of St. Paul's church in that city. I have been Doctor of Divinity only since May last, by degree conferred by the University of Glasgow.

3. What is the name and designation of your church in Canada? Were both those congregations of that church?

Ans. "The Presbyterian Church of Canada, in connection with the Church of Scotland." Both the congregations of which I was pastor were of that church.

4. What is and what has been the connection of your church in Canada with the Church of Scotland?

Ans. It is a mere filial relation. Originally, at the formation of our Synod, all our ministers were ordained by the Church of Scotland. We held that we were representatives of the Church of Scotland in Canada, as distinct from other bodies of Presbyterians.

5. What is your church called in the Imperial Statutes?

Ans. "The Church of Scotland." There is only one imperial statute in which that designation is given; that is the statute relating to the Clergy Reserves in Canada. Our legal title in Canada is that stated in my third answer. In our title deeds this designation is used. [Mr. Hillard, counsel for respondent, objects to this 5th interrogatory.]

6. Has the Church of Scotland ever had any jurisdiction over your church?

Ans. No.

7. To what church does the Presbyterian church of Canada trace the ordination of its Presbyters?

Ans. To the Church of Scotland.

8. Where and by what church were you ordained?

Ans. I was ordained in Glasgow, by the Presbytery of Glasgow, one of the Presbyteries of the Established Church.

9. Do your Presbyteries now ordain ministers in Canada?

Ans. We perpetuate our own succession, as the bishops of the English Church do theirs.

10. How does your Church correspond with the Church of Scotland in doctrine, discipline and worship? What are its standards?

Ans. We have an entire correspondence with the Church of Scotland in doctrine, discipline, and worship. The Confession of Faith, the Larger and Shorter Catechisms, are the doctrinal standards of our church. The Book of Discipline is our standard of government and discipline. The book now exhibited to me and identified by the magistrate sets forth these standards.

11. What are your judicatories, and the organization of your church in Canada? How are they severally composed?

Ans. We have a Session, Presbytery, and Synod. The session is composed of the ministers and elders of a particular congregation. One of the elders is chosen by the session, ruling elder for the year. Each Presbytery is composed of the ministers and elders of all the congregations within its bonds—that is to say, of all the ministers and one elder from each congregation. All the members of the several Presbyteries together constitute the Synod.

12. Have you ever had a general assembly in Canada; if not, why not?

Ans. We never have had a general assembly in Canada. The reason is, we are not sufficiently large to have a general assembly. It is not necessary.

13. Is a general assembly an essential part of Presbyterianism, a matter of principle or convenience, or how otherwise?

Ans. It is not an essential part of Presbyterianism, nor is it a matter of principle; it is only a matter of convenience, when the church is large or greatly extended.

14. If there are not Presbyterians enough for a general assembly, does the Synod exercise the powers of a court of final resort?

Ans. It does. In that case we call the Synod our supreme judicatory.

15. Is a Synod an essential part of Presbyterianism, a principle, or matter of convenience?

Ans. A Synod is a mere matter of convenience, like a general assembly; when the church becomes large or the churches are extended over a large territory it becomes convenient to divide the Presbytery into several Presbyteries, which constitute a Synod.

16. If there is no Synod, is the Presbytery the supreme judicatory?

Ans. Yes.

17. How are the meeting-houses built and held in the Presbyterian church of Canada in connection with the Church of Scotland, of which you say you are a member and Presbyter?

Ans. Our church edifices are generally built by subscriptions or donations; they are held by special deeds to trustees to secure them to the Presbyterian church in connection with the Church of Scotland. [Mr. Hillard objects to so much of this answer as follows the word trustees.]

18. Is there any uniform style and form of deed, or do the deeds vary?

Ans. We have a general form of deed, but some deeds contain special provisions. They are pretty uniform. The commissioners of the Clergy Reserves, where they make appropriations of money to aid in the erection of manses, are very particular to see that the lands on which the same are built shall be secured for the use of the ministers of the particular church. I mean by Church the general organization, not the particular congregation, and for the minister of that organization in each particular locality.

19. If the manses are built on lands distinct from that on which the church stands, have the commissioners any concern with the title to the church edifice?

Ans. No.

20. Does the pew-holding system obtain in your church in Canada, and how generally?

Ans. It prevails generally—I might say universally.

21. According to the laws and usages of your church in Canada, what are the powers and privileges of the pew-holders in matters of doctrine, discipline, and worship?

Ans. They have none at all, excepting the right of occupancy of their pews, on paying for them.

22. What powers and privileges in matters of property, calling of a pastor, election of elders and other officers, and in other matters not already answered to by you? Please to distinguish as to communicants and non-communicants.

Ans. Pew-holders, as such, not being communicants, have not generally any voice in calling a pastor. The Presbytery regards the communicants as the Church. The election of elders belongs to the communicants. The pew-holders have a voice in the election of trustees, for the management of the temporalities of the church. There is nothing else that occurs to me in which the pew-holders have a voice.

23. Are the pews held by purchase or lease, or both?

Ans. In both ways.

24. Are the rights and privileges of the pew-holders, as to matters of doctrine, discipline, and worship, and in calling a pastor and electing elders, any greater or other when the pews are held by purchase than when held by lease?

Ans. No; they are the same.

25. When the minister is called by the proper parties, what is required of him before he can be installed or ordained?

Ans. Before he can be called, a minister must be qualified, according to the laws of the church, to receive a call. Such a person being called, the Presbytery examine into the proceedings of the congregation in the matter, to be satisfied that they have been regular. When the proceedings have been ascertained to be regular, the Presbytery will take the individual called upon trials for ordination, if unordained; and, being satisfied after these trials, they ordain and induct, according to the rules of their own procedure. At the ordination service, the constitutional questions are propounded to him. He is required to profess his belief in the Confession of Faith as his confession, and belief in the government and discipline of the church as agreeable to the Word of God. He solemnly engages that he will follow no divisive courses from the doctrine and government of the church, and that he will submit to the authority of his brethren of the Presbytery.

26. Have any cases occurred in your church of an attempt by the pew-holders, or congregation or church members, to change the doctrine, discipline, or worship of a congregation holding a meeting-house?

Ans. I never knew of such a case.

27. Have any such occurred in matters of ecclesiastical relations; if so, what has been the result?

Ans. There were a number of congregations, a few years ago, who separated from us, on the ground of our connection with the Church of Scotland, as expressed in our title. They formed themselves into a new church, taking for their title "The Presbyterian Church of Canada," without the special designation that we have, as connected with the Church of Scotland. The law courts considered that, by such change, they have ceased to be an integral part of the church with which they had been formerly connected, and dispossessed them of their property, by virtue of the provisions contained in their title-deeds. These brethren held a government endowment, in virtue of their connection with our Synod. The law officers of the crown decided that they were not entitled to hold it any longer, after their separation. [Mr. Hillard objects to all the latter part of this answer, commencing with the words, "the law courts."]

28. By the law of Canada, if a majority of the pew-holders or of the communicants, or both, make a material change in the doctrine, discipline or worship, can they hold the meeting-houses?

Ans. Certainly not.

29. Since you have been ordained, have you given any and what study to ecclesiastical law and history?

Ans. I have given attention to these subjects.

30. How long has this law and usage, as to pew-holders and the congregation, prevailed in settlement?

Ans. Since the commencement of the Presbyterian church in Canada, these usages have prevailed. Our Synod was organized in 1851. But there were Presbyterian congregations for almost 50 years before that time. These usages prevailed in the separate congregations prior to the organization of the Synod. There were no Presbyteries engaged prior to the organization of the Synod.

31. Were you baptised and educated in the Church of Scotland? How long did you worship there?

Ans. I was baptised and educated in the Church of Scotland, and worshipped there till I came out to this country, in 1829.

32. In what university were you educated? Is that a university of the Church of Scotland?

Ans. I was educated at Glasgow University, one of the universities of Scotland. An education in that university is one of the recognised qualifications for admission to the ministry of the Church of Scotland.

33. Do you consider yourself acquainted with the laws and usages of the Church of Scotland, and of the ecclesiastical courts thereof?

Ans. Yes, I have competent knowledge of them.

34. According to the tenures, and after the manner in which

the Church of Scotland holds and enjoys the meeting-houses, what are the rights and privileges of pew-holders as to the religious relations of the congregation, its doctrine, discipline, and mode of worship? Please answer this as to parish churches proper, quoad sacra churches, and Chapels of Ease. [This question was objected to by Mr. Hillard.]

Ans. In regard to parish churches I would say, that the privileges of a pew-holder and communicant are to enjoy religious ordinances free of charge, for the most part. In the cities they usually pay pew rents in the parish churches. They have no control in the regulation of doctrine or worship. Such a thing is never thought of in Scotland. In the quoad sacra churches and Chapels of Ease, they are usually entitled to a vote in the election of ministers, but this is not universally the case; but the electors must also be communicants; they must be both pew-holders and communicants. This is the only peculiarity in regard to these two kinds of churches.

35. Can the patron or the congregation appoint any other than a clergyman of the Church of Scotland? What is required of him before his ordination and installation?

Ans. They can only appoint a person authorized to preach by the Church of Scotland. He is required to undergo the prescribed trials in the manner I have already stated in regard to the church in Canada, and to take, and to make the same profession and take the same engagements.

36. Do any pew-holders not being male communicants vote in any cases in the Church of Scotland?

Ans. Not that I am aware of. I can conceive that a pew-holder not being a communicant might be entitled to vote in a matter purely temporal.

[For interrogatory and answer omitted here by mistake see end of deposition.]

37. Has there been a change in the law or usages of the Church of Scotland since the beginning of the 18th century, until Lord Aberdeen's bill, 1844, in respect to the powers of pew-holders of which you have spoken?

Ans. There has not that I am aware of.

38. In case the majority of all the pew-holders or sitters, or all the congregation and patron, should endeavor to change the doctrine, discipline, or worship of a church, what would be the result according to the law and usages of the Church of Scotland?

Ans. I think the Church of Scotland would excommunicate them all. They could not hold the church edifice or lands. Such things are not regulated by majorities but by law in Scotland.

*Cross-interrogatories.*

1. How has the ancient schism in the Kirk of Scotland affected the Presbyterian church in Canada?

Ans. It has not affected our church at all.

2. Is any patronage known in Canada?

Ans. No.

3. Do you regard the seceders in Scotland as belonging to the church?

Ans. No. I mean not to the Established Church.

4. Is there any point of difference except that of lay patronage?

Ans. There is no difference except that connected with the election of ministers. The Free Church profess adherence to the same standards of doctrine, discipline, and worship with the Church of Scotland.

5. The Free Church have lost their parish churches, have they not?

Ans. They went out from their churches. Some of them were ejected by legal process. All of them forfeited every privilege held by them while connected with the establishment.

6. Are deeds of land recorded in Canada?

Ans. There is a regular registration of deeds in Canada.

7. How are the ministers supported in Canada, by assessments on pews, or how otherwise?

Ans. There are different plans. Some are supported by pew rents, some by subscriptions. All the ministers of our church in Canada have an allowance from the Clergy Reserve lands.

8. What is the title deed or instrument by which the pew-holders hold their pews?

Ans. If it is a purchase he has a deed from the trustees, or it may be that his name is recorded in the record as one of the proprietors. In some cases only leases are given. The title deed contains conditions. One of the conditions universally is, that they are subject to a ground rent. In some cases there is a condition that this rent shall be raised after a certain time. It is also usual to insert a provision that assessments may be laid for the maintenance and reparation of the edifice.

9. Are any of these pews transmissible and devisable like other property?

Ans. I think they may descend or may be sold like any other property subject to the conditions.

10. Are the commissioners of the Clergy Reserve lands who have the power to aid the Presbyterian church, themselves Presbyterians?

Ans. All of them. They are elected by Synod. There are nine of them.

10. Do you know how many Presbyterian congregations there were in Canada, say from 1810 to 1820?

Ans. I am unable to answer. The number was very small. There were very few of our church or of any church when I came out in 1829.

12. (De bene esse.) How did you learn or do you know the decisions of the law courts in Canada, to which you have referred?

Ans. I learned it from the newspapers, and from my friends who were deprived of their allowance, and were deprived of their churches and manses, and from the fact that our church inducted ministers to the churches from which the former occupants had been dispossessed.

13. Is such a word as meeting-house known to the laws or usages of the Church of Scotland?

Ans. We do not use the term meeting-house in the Kirk of Scotland, with reference to their own church edifices.

14. Are there such things as pews known in the parish churches of Scotland?

Ans. Oh, yes. They have them in all the churches. I never saw them otherwise.

15. Are not the seats appurtenant to the lands belonging to the heritors?

Ans. For the sake of convenience, and that tenants of different estates may know where to go in the church, the church is apportioned among the several estates so as to meet their wants, and these apportionments may be changed from time to time to accommodate the spiritual wants of the parish.

16. At the beginning of the last century was there any private or individual property or right in the pews of the Church of Scotland, as a general rule?

Ans. I think not. I think at that period they must have generally been public property.

*Examination renewed on part of Relators.*

39. Does what you have said about the allocating of seats among the tenants apply to quoad sacra churches or Chapels of Ease?

Ans. It cannot apply to them.

40. Were there or not at the early part of the 18th century, exceptional cases of property in pews, in the towns or elsewhere?

Ans. I am not informed on that point.

Ques. When were Chapels of Ease first introduced into the Church of Scotland?

Ans. It must have been some time in the last half of the last century.

(Signed) ROBERT McGILL.

The subscriber certifies to the court that, by mistake, one interrogatory and the answer thereto were omitted by him in recording the interrogatories, on the part of the relators, which interrogatory and the answer thereto were as follows:

Ques. By what means are the quoad sacra churches and the Chapels of Ease established and supported?

Ans. By subscriptions (or contributions) and donations.

And this interrogatory and answer should have been inserted immediately after the answer to the 36th interrogatory.

(Signed) WM. J. HUBBARD,
*Master in Chancery.*

*Rev. John McJimsey's Testimony.*

1. What is your name, age, occupation and residence?

Ans. My name is John McJimsey; I am in my 82d year; I am a minister of the Gospel; I reside in Crawford, in Orange county, New York.

2. How long have you been in the ministry, and in what ministry?

Ans. I have been a minister in the Associate Reformed Church, Presbyterian. I have been an ordained minister since December, 1795, in the same denomination.

3. Have you ever been connected with the Associate Reformed Presbyterian Church as an officer; in what capacity, and for how long?

Ans. I was connected with it as clerk of the Synod, being first chosen in 1796, until 1802. I have also been chosen moderator on several occasions.

4. Look on the manuscript book produced, and say what you know of it. In whose handwriting is it? (Objected to for substance.)

Ans. When I was chosen clerk of the Synod in May, ninety-six, this book was put into my hands by the Synod, and when it was put into my hands there were three years of untranscribed minutes, which I transcribed after I was chosen clerk, commencing in 1793. That portion of these minutes is in my own handwriting. A portion of the remaining part of the record I was instructed by the Synod to procure a scrivener to transcribe, it being too voluminous for me to do so, and it was accepted by the Synod as their official record. From the time I was chosen clerk till ninety-nine, the records are in my handwriting, and after that time the scrivener transcribed them. (This answer is objected to.)

5. Was the government, discipline and worship of the Associate Reformed Church in North America, entered on the records, beginning at page 265, so entered by order of the Synod? (Objected to for substance.)

Ans. Yes, sir.

6. Has there been, to your knowledge, any change in the government, discipline and worship of said church, from that time to this? (Objected to for substance.)

Ans. Not any that I know of.

7. State whether or not the said government, discipline and worship was the same in Presbyterian churches in the country, from the year 1735? (Objected to, as beyond the knowledge of the witness, and impertinent.)

Ans. I don't know that to be a fact, because I was not in the ministry at that time. I don't know of any change. I know that the Westminster Confession of Faith was the standard before I became a minister. I know it from the fathers who transmitted it to me. (The answer objected to.)

8. How did the "government, discipline and worship of the Associate Reformed Church in North America," transcribed in the records, compare with those of the Church of Scotland in 1735? State your means of knowledge.

Ans. I believe it agreed with it essentially; as to the comparison I can't tell particularly. The Westminster Confession of Faith was the standard by which ours was compared with that. I know also from the testimony of the fathers of the church with whom I have conversed.

9. Did you know Robert Annan? Who was he? When and where did you know him? Did you know where he was a minister?

Ans. I did know him. He was a minister of the Gospel of the Associate Reformed Church, settled in Philadelphia, when I first became acquainted with him. This was in 1794. He acted as moderator of the Presbytery in May, 1794, when I was licensed to preach.

10. Did you know of his being a minister in Boston? How do you know? State all you know.

Ans. He was a minister settled in Orange county over the congregation in which I became a pastor. Some years after he left there I had it from himself that he was a pastor in Boston. It was in 1782 that the constitution of our church was adopted finally, and he was pastor in Boston, as he told me, after that time.

11. Did Mr. Annan continue, and how long, in the ministry of the Associate Reformed Church? When did he die? Was he in the same ministry at his death?

Ans. He did continue in that ministry till the day of his death. I can't tell the precise day of his death. I think it was in 1816.

12. Of what country was Mr. Annan, and where was he educated for the ministry?

Ans. I believe he was a Scotchman. He told me so. I can't tell where he was educated for the ministry. I believe it was in Scotland. (The answer objected to.)

13. What do you mean when you say that the constitution of our church was adopted in 1782?

Ans. It was then that the Synod was organized as a Synod. Before it was composed of two bodies who united together, the As-

sociate Presbyteries and the Reformed Presbyteries. They formed a union at that time, and from that time these two bodies were Presbyterian in doctrine and government. They were so before, and remained so afterwards.

14. Were the various Presbyteries of your church united in a Synod before 1782?

Ans. No, sir.

15. Do you know anything of the organization of the Presbyterian church in Boston, of which the Rev. Alex. Blaikie was pastor?

Ans. Yes, sir. I was appointed by the Associate Reformed Presbytery of New York to come to Boston, and with the aid of Mr. Blaikie to organize an Associate Reformed church. This was in November, on Thanksgiving day, 1846. It was organized at that time, according to the order of the church, and has been recognised as such by the Presbytery ever since that time.

16. Is the Rev. Mr. Blaikie a member of the Associate Reformed Presbytery of New York, and how long has he been so?

Ans. He is a member, and has been so for a number of years.

*Cross-interrogatories.*

1. Will you be kind enough to revise your answers to the 8th, 11th, 13th and 14th direct interrogatories, and state what part of the facts stated by you in each are known to you of your actual personal knowledge, and how much and what part is derived from the information of others?

Ans. As to the 8th interrogatory, I was a member of the Synod of the Associate Reformed Church when that book of discipline was under discussion in our Synod, and which was adopted in the year 1799. I only know by information and reading the books that the standard of the Church of Scotland was the same in 1735. As to the 11th interrogatory, his death was reported to the Synod at the time. I have heard him preach at different times before his death, and he preached for me. I think I saw him as often as once in three years from 1796 to the day of his death. As to the 13th, I derive my knowledge of the facts stated in this answer from authentic information. I was not present at that convention. As to the 14th, I know from information from agents who had a hand in the organization, and from official documents in reference to the meeting.

2. How do you know, of your own knowledge, that such documents were official?

Ans. I know it from the minutes of the body when it met, just as I know an act of the legislature.

(Signed) JOHN McJIMSEY.

*Rev. Daniel Dana's Testimony.*

The Rev. Daniel Dana, D. D., testified as follows: I am eighty-two and a half years of age. I reside in Newburyport, in Massachusetts, and am a clergyman of the Presbyterian connexion. Have been clerk of the Presbytery and Synod, and occasionally moderator. The book shown me is the book of records of the Presbytery of Londonderry, and likewise of the First Associate Reformed Presbytery of Londonderry, which in 1794 was combined with the members of the Eastern Presbytery of Londonderry, and from that time they were called the Presbytery of Londonderry. I have made entries in this book as clerk, and know it to be the records, such as I have described.

Cross-examined. This book is in the handwriting of various clerks. I know the handwriting of some of them. There can be no doubt that it is the veritable handwriting in which it purports to be. I know the facts recorded in this book generally of my own knowledge, but not all of them.

[The extracts from these records relied upon by the relators are printed infra.]

*Rev. Wm. W. Eells' Testimony.*

I reside in Newburyport. Am a clergyman of the Presbyterian connection of Londonderry. I officiate in Newburyport. The Presbytery to which I belong is that of Londonderry.

Mr. Dana. Take the older of the two books you have there, and state what you know of that book.

Witness. At the decease of the former stated clerk of the Presbytery of Londonderry, Rev. Mr. Parker, I was appointed stated clerk. That officer is not chosen every year, but is appointed for many years. This book was in the hands of Dr. Perry, of Groveland, by authority of an order of the Presbytery. By an order of the Presbytery he was appointed to write the history of Presbyterianism in New England, and these books were ordered to be delivered to him for that purpose. When I was appointed clerk, the Presbytery directed him, by resolution, to place in my hands all the books and records in his possession belonging to the Presbytery, for safe keeping. This book I received from him, he having received it from the Presbytery. It has been ever since in my custody as clerk. I have not made entries in it, as clerk, but in a later book.

Mr. Dana. Identify that book as well as you can.

Witness. It is the book of the records of the Presbytery of Boston, and then of the Synod of New England. The Presbytery of Boston grew into the Synod of New England, and relapsed again into the Presbytery of Boston. The first date is 1745.

Mr. Dana. When did the records of the Synod of New England commence?

Witness. The records are continued together. They commence with the Presbytery, and are continued with the Synod, and then run into the Presbytery again.

This book [taking the other before him] is the book of the records of the Presbytery of the Eastward. It is commenced in 1771—June 27, 1771. This book came into my possession in the same manner as the other, by order of the Presbytery of Londonderry, and at the same time. I have made an entry in this book as clerk, of a resolution ordered to be entered in it by the Presbytery, which (resolution) came into my hands in the original manuscript. I was appointed clerk some four years ago.

[The extracts from these books, relied upon by the relators, are printed infra.]

The relators then put in by consent, the Records of the Church Sessions of the Presbyterian Church at Londonderry, the extracts from which relied upon by the relators are printed infra.

The relators then put in the following books, passages from which, referred to below, may be read at the hearing before the full bench.

Acts of Assembly of the Church of Scotland, 4 vols.

Confessions of Faith, Catechisms, Directories, &c. (Edinboro', 1725.)

Collections, by Stuart of Pardovan, (Edinboro', 1719,) pp. 176 and 299, (1719.)

Erskine's Principles of the Law of Scotland, pp. 117 and 241.

Bell's Principles, vol. 1, p. 425.

Bell's Illustrations, vol. 3, pp. 155–'6.

Do. do. vol. 2, p. 63.

Hetherington's History of the Church of Scotland.

Constitutions and Standards of the Associate Reformed Church in North America, (editions from 1735 to 1850,) p. 1, fly-leaf.

The relators will also read, as evidence of the Law of Scotland, 5 Court of Sessions Cases, (1843,) p. 1430: Easson's case, 6 do., (1844,) p. 701; Duke of Richmond's case, 11 do., (Dunlop's, 1849,) p. 1361; Presbytery of Fordyce vs. Shanks, 12 do., (1750,) p. 532; Craigie's case, 18 Scottish Jurist, p. 305, (1846;) Presbytery of Edinburgh vs. Trustees of Lady Glenorchy's Chapel; Erskine's Principles of the Law of Scotland, and Bell's Principles of the Law of Scotland, and Dunlop's Parochial Law.

The relators then called for the two volumes of records referred to in the answer as being in the possession of the defendants. The records from 1803 to the present time were produced, but the defendant's counsel offered the following affidavit as to the loss of the book of records from 1774 to 1803.

*Affidavit of G. S. Hillard, Esq.*

I, George S. Hillard, of Boston, in the county of Suffolk, and State of Massachusetts, counsellor-at-law, on oath, depose and say as follows:

I was retained by the defendants as one of their counsel at the commencement of the proceedings against them. Being junior counsel in the case, the task of preparing the first draught of the answer devolved upon me. To the best of my recollection, I addressed myself to this duty in the summer of 1851. In order to present a full statement of the points relied upon in defence, it became necessary for me to examine all the records and documents in the possession of the defendants. With this view, I obtained from Mr. Elisha Bassett, the clerk of the proprietors or pew-holders, being the legal corporation, all the books and papers in his charge. These were contained in a trunk. I also obtained from the Rev. Dr. Gannett, the pastor of the church, two or three books in his possession, which belonged to or recorded the proceedings of the church or body of communicants. All these remained in my possession, at my office, for several months. To the best of my recollection, some time in the autumn of 1851, or perhaps in the ensuing winter, I returned to Mr. Bassett the trunk of books and papers which I had received from him, and I feel quite confident that I also deposited in the trunk the books I had received from Dr. Gannett, in order that all the documentary evidence in the case might be accessible in one place.

Among these books received from Mr. Bassett, and which I supposed I had deposited into his hands and custody, was a quarto MS. volume, containing the record of the doings of the proprietors from the 5th day of April, 1774, to the 29th day of May, 1803. The letter appended to the answer of the defendants was contained in the said volume. A copy was made in my handwriting, and compared by me with the original, and the printed impression was struck off from the said copy; and I hereby certify that the said printed document is a correct copy of the record therein contained. After returning the trunk aforesaid, with its contents, to Mr. Bassett, I had no occasion to examine or refer to it, or its contents, for some months. When I next went to it, it was in search of the aforesaid quarto MS. volume, but to my great surprise and annoyance, it was not to be found in the said trunk, nor after the most diligent search and inquiry has it ever been found since. Its disappearance is entirely inexplicable to me, and I cannot recall the least hint or clue which might lead to its recovery. During the interval which elapsed between my returning the trunk to Mr. Bassett and my subsequent recurrence to it I should have been willing to swear that the said volume was with the other books and records in the said trunk, and my astonishment at not finding it was equal to the confidence with which I expected to find it.

I also certify that the said volume, under date of August, 1786, contained a record, which, to the best of my recollection, was in the words following, to wit:

BOSTON, *Aug.*, 1786.

At a meeting of the proprietors and others of the Presbyterian church, Long Lane, Robert Weir, moderator, voted unanimously, that this church and congregation do embrace the Congregational mode of government, and that all difficulties in the church hereafter be settled by the ministers or male members of the church.

GEO. S. HILLARD.

BOSTON, *Feb.* 28, 1854.

Sworn to before me.

S. BARTLETT,
*Justice of the Peace.*

*Extracts from the Records of the Associate Reformed Synod, testified to by the Rev. Dr. McJimpsey.*

1782.

In Mr. William Richards's, Philadelphia, Oct. 31, 1782.

The Associate Reformed Synod met, and was constituted with prayer by Mr. David Telfair, moderator of the convention.

Sederunt, Messrs. John Mason and Robert Annan, ministers, with Mr. McKinley, ruling elder, members of the Presbytery formerly styled the Associate Presbytery of New York; Messrs. James Proudfit, John Rogers, John Smith, and William Logan, ministers, with Messrs. Joseph Miles and Thomas Douglass, ruling elders, members of the Presbytery formerly styled the Associate Presbytery of Pennsylvania; Messrs. John Cuthbertson, Matthew Linn, and Alexander Dobbin, ministers, with Messrs. James Bell, John Cochran, and Robert Patterson, ruling elders, members of the Presbytery formerly styled the Reformed Presbytery of Pennsylvania.

Mr. Mason was chosen moderator of the Synod, and Mr. Patterson was chosen clerk; but as Mr. Patterson desired to be excused at present from acting in that character, on account of unavoidable avocations, Mr. Proudfit was desired to take his place, which he did accordingly.

Resolved, That Presbyteries be arranged with an accommodation to the new stations in which Divine Providence hath placed us, and to our local circumstances.

* * * * * * * * *

EODEM LOCO. *Nov.* 1.—*Hora* 9 *A. M.*

The Synod met according to adjournment.

Sederunt ut supra.

The minutes of the last session were read. The arrangement of the Presbyteries was resumed. After some debate the Presbyteries were established in the following order, under the style of the First Associate Reformed Presbytery, the Second Associate Reformed Presbytery, the Third Associate Reformed Presbytery.

The First Presbytery is to consist of Messrs. David Telfair, John Cuthbertson, James Proudfit, and John Smith, ministers, with their ruling elders. The Second Presbytery is to consist of Messrs. Matthew Henderson, Matthew Linn, John Rogers, Alexander Dobbin, Wm. Logan, and John Murray, ministers, with their ruling elders. The Third Presbytery is to consist of Messrs. Thomas Clark, John Mason, Robert Annan, and David Annan, ministers, with their ruling elders. The Presbyteries thus arranged are appointed to meet and constitute this day, at 3 o'clock p. m., at the following places, viz.: The First Presbytery is directed to meet and constitute in the house of Mr. David Telfair, the Second in this place, and the Third in the house of Mr. Alexander Robertson.

Ordered, That all process and other matters that were depending in the Presbyteries before the erection of the Synod be brought to issue by the Presbyteries, as now arranged, in such a manner as will be most suitable to their local situations.

The Synod proceeded to consider certain articles presented by the convention as proper to display the principles upon which the Synod should act.

Ordered, That these be considered, first in their connection, and then separately.

The Synod, not being able at this session fully to deliberate on these articles, adjourned, to meet at three o'clock p. m.

Closed with prayer.

EODEM DIE ET LOCO, 3*d Hora, p. m.*

The Synod met according to adjournment. Sed'nt ut supra.

The articles were resumed, examined, and debated by paragraphs, and amended. After serious deliberation and solemn prayer, the question was put:

"Approve of these articles, as proper to display the principles upon which we intend to act, or not."

The roll being called, the question was carried unanimously in the affirmative.

Ordered, That the articles as amended be inserted in the minutes mutatis mutandis, for the purpose of ascertaining the constitutional principles of this Synod.

They are expressed in the following words:

*Article* 1*st.*

It is the resolution of this Synod, to persevere in adhering to the system of truth contained in the Holy Scriptures, and exhibited in

the Confession of Faith and Catechisms, Larger and Shorter, and to the fundamental principles of gospel worship and ecclesiastical government held forth in the Directory for Public Worship, and the form of Presbyterian Church government agreed upon by the assembly of divines at Westminster, with the assistance of commissioners from the Church of Scotland. This declaration does not, however, extend to the following sections of the Confession of Faith, which define the power of civil government in relation to religion: Ch. 20, sect. 4; ch. 23, sect. 3; ch. 31, sect. 2. These sections are reserved for a candid discussion on some future occasion, as God shall be pleased to direct. Nor is it to be construed as a resignation of our right to adjust the circumstances of public worship and ecclesiastical polity to the station in which Divine Providence may place us. All the members of the Synod, in the meantime, acknowledge that they are under the most sacred obligations to avoid unnecessary criticisms upon any of those excellent treatises which would have a native tendency to weaken their attachment to the truths therein contained. If any of the members of the Synod shall conceive any scruple or scruples at any article or articles of the Confession of Faith, Catechisms, Directory for Worship or form of Presbyterian government, or shall think they have sufficient reason to make objections thereto, they shall have full liberty to communicate their scruples or objections to their brethren, who shall consider them with impartiality, meekness, and patience, and endeavor to remove them by calm, dispassionate reasoning. No kind of censure shall be inflicted in cases of this nature, till this Christian process shall be fairly tried, unless those scrupling or objecting brethren shall disturb the peace of the church, by publishing their opinion to the people, or by urging them in judicatories with irritating and schismatic zeal.

*Article 2d.*

The ministers and elders met in Synod also declare their hearty approbation of the earnest contending for the faith, and magnanimous sufferings in its defence, by which our pious ancestors were enabled to distinguish themselves in the two last centuries. That they have an affectionate remembrance of the National Covenant of Scotland, and of the Solemn League and Covenant of Scotland, England and Ireland, as well-intended engagements to support the cause of civil and religious liberty; and hold themselves bound by the Divine authority to practice all the moral duties therein contained, according to their circumstances. That public and explicit covenanting with God is a moral duty under the gospel dispensation, to which they are resolved to attend as He shall be pleased to direct. That it is their intention to carry with them all the judicial testimonies against defection from the faith once delivered to the saints, which have been emitted in the present age by their

brethren in Britain, as far as these testimonies serve to display the truth and comport with the circumstances of our church; and that they will avail themselves of every call to bear a pointed testimony against the errors and delusions which prevail in this country.

* * * * * * * * *

"They wish posterity may know that once they belonged to the Church of Scotland; that they carried with them into America the system of truth adopted by that church, and the substance of the testimonies against deviations from that system; and that they esteem it their honor and duty to support their connection with those brethren who still labor to preserve it in its purity, as far as such support is consistent with their independence upon any foreign judicatory."

*Extract from the Records of the Presbytery of the Eastward, testified to by the Rev. Mr. Eells.*

BRUNSWICK, *Oct.* 12, 1774.

The Presbytery met according to adjournment.

Post preces sederunt—Rev. Joseph Prince, John Miles, * * * &c.

Elders—Messrs. George Rodgers, Samuel Stanwood. * * * &c.

Rev. John Prince, moderator; John Murray, clerk.

* * * * *

Mr. John M'Lean, a commissioner from the first Presbyterian Church in Boston, presented to this Presbytery a call from that congregation to the Rev. John Murray, praying them to present and recommend the same to him, and to take the proper measures for his removal from Boothbay to them.

The Presbytery, after hearing the said commission, and finding that the said congregation have taken the regular steps, in order to calling a minister, that the call was fully and freely drawn up, voted, and signed, and that inasmuch as said congregation is now actually unconnected with any other Presbytery, (having regularly withdrawn by declinature from that of Boston,) it comes immediately before us without any irregularity, and therefore that the said call ought to be sustained as regular and valid, and this Presbytery do sustain the same accordingly; and ordered the moderator to prefer the call to the said John Murray, and appoint a time for both the congregation calling, and that from which he is called, to appear at our next, and be heard pro and contra, the said Mr. Murray promising, upon condition his people may first have a fair hearing, he will then submit the matter entirely to this Presbytery, and endeavor to be obedient to the sentence; whereupon said call was presented.

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BRUNSWICK, *Nov.* 23, 1774.

Upon the call from Boston, to the Rev. John Murray, Mr. M'Lean appeared and delivered a commission from the church and congregation there to be their representative, and Messrs. John Beath and Paul Reed appeared and delivered commissions from the town of Boothbay, to act as representatives of said town.

[Here follow full proceedings and inquiries, extending over several pages of the records, and continued to several adjournments.]

MAY 9, 1776.

Ordered, upon reading the minutes respecting the Boston case, it was moved and seconded, that the arrival of the members absent yesterday has made this meeting full, the reasons of deferring judgment on said call till our next meeting are now removed, and the interests of this valuable congregation, of which the utmost tenderness is an especial duty in its present distress, might greatly suffer by delaying our result, that therefore this Presbytery ought now to proceed to the consideration and decision of that important case.

* * * * *

It is the judgment of this Presbytery, after a serious consideration of the matter respecting the removal of the Rev. Mr. Murray from his pastoral relation to the church at Boothbay to the church in Boston, that it is by no means expedient in the present state and circumstances of that town and people.

*Extract from the Records of the Presbytery of Boston, testified to by the Rev. Mr. Eells.*

*Extract from p.* 15.

Minutes of the Rev. Presbytery now called the Presbytery of Boston, consisting of twelve congregations, whose ministers are as followeth: John Moorhead, Boston; David M'Gregor, Londonderry; * * * * &c. &c.

Met at Boston according to appointment, Oct. 24, 1770. Constituted by prayer.

Members present—John Moorhead, David M'Gregor, * * * &c. &c.

Rev. Mr. Moorhead was chosen moderator.

*Extract from p.* 62.

SEP. 15, A. D. 1774.

Ordered, That the declinature of Boston Society be put to the hands of the Rev. Mr. M'Gregor, and that he write a letter to them respecting their conduct in that matter, and cite them to appear at our next session.

* * * * *

NEWBURYPORT, *Nov.* 9, 1775.

* * Resolved, That the plan of the Synod be now taken into consideration, and that this Presbytery now fix the same to be laid before the respective elderships of every congregation, in order to prepare matters to adopt the same at our next stated meeting.

This Presbytery, taking into solemn and serious consideration the plan of our Synod, unanimously came to the following conclusion, viz: That Messrs. Jona. Parsons, Doc'r Whitaker, Sam'l Perley, Alex'r McLean, Thos. Pierce, with their congregations, and also the congregation of Boston, now under their care, with the other vacancies in their bounds, together with the Rev'd Mr. Balch, shall (as the plan be adopted according to the preceding minute) be the Eastern Presbytery, called the Presbytery of Newburyport.

That Messrs. Dav'd M'Gregor, Dan'l Mitch'l, Simon Williams, and John Strickland, with their congregations, together with the vacancies in their bounds, shall be the Middle Presb'y, called the Presbytery of Londonderry.

That Messrs. John Houston, Moses Baldwin, with their congregations of Blandford, Pelham, and Colrain; also Messrs. Aaron Hutchinson, Nath'l Merril, Geo. Gilmore, and Joseph Patrick, shall be the Western Presbytery, called the Presbytery of Palmer.

It is also further resolved, That Messrs. David McGregor and Simon Williams do form into one compleat model the three different schemes w'ch have been layd before this body, inserting only those parts in each paper which have now been approved of, and that from the original draught which is to be left in the clerk's office, and that the clerk send three fair copies in manner following, viz: one copy to Newbury Port, another to Bedford, and one to Londonderry; and it is ordered, that these copies, with others, be laid before the several sessions of the respective congregations w'ch now constitute this Presbytery.

*Extracts from the Records of the Synod of New England, testified to by the Rev. Mr. Eells.*

SEPTEMBER 4, 1776.

Agreeably to appointment, the Snyod met at Londonderry, and after a sermon by the Rev. David McGregor, of Londonderry, instituted by prayer.

* * * * * * *

LONDONDERRY, *Oct.* 1, 1778.

* * * * * * * .

The Synod having received a petition from the church and congregation of Peterborough, requesting their dismission, and also a recommendation to the Rev'd Seceding Presbytery of New York;

the Synod, taking the case into solemn consideration, and observing the fair prospect of having the Gospel regularly settled among them, do hereby dismiss and recommend them in good standing with this body, to that said Presbytery.

MAY 15, 1782.

The Synod of New England met at Boston, pro re nata, by notification from the moderator.

* * * * * * *

LONDONDERRY, 2*d Wed. of Sept.*, 1781.

Synod met according to appointment. * * *

The Synod was favored with a conference with the Rev. Messrs. Annans, relative to a union with their body, and greatly rejoice at the motion they have made, and at the great harmony of sentiment, both as to doctrine and discipline, that is found to subsist between them and us. Therefore ordered that the clerk furnish them with a copy of the constitution.

* * * * * * *

Decision deferred to the next meeting.

LONDONDERRY, *Sep.* 17, 1782.

The Synod being this day dissolved by unanimous vote, the members convened at the house of Elder Fisher, in order to form themselves into a Presbytery.

[*Organization of the Presbytery.*]

This Presbytery appointed to meet in Salem the 2d Wednesday in September next.

*Extract from the Records of the Presbytery of Boston, (or Salem,) after the Dissolution of the Synod of New England, testified to by the Rev. Mr. Eells.*

SALEM, 10 *September*, 1783.

The Presbytery met according to appointment. * *

ter be wrote by Dr. Whitaker on the subject, in the name of this

As no further answer has been received, order that another let-

Presbytery, to the Rev. Robert Annan, of Boston, to be communicated to their body.

* * * * * * *

The Presbytery of Salem met in Groton, according to appointment, June 9, 1784. * * * * *

A letter was wrote, by order of the Presbytery, to the Rev. Robert Annan by Dr. Whitaker, respecting an union with this Presbytery, but no answer was received.

*Extract from the Records of the Associate Reformed Presbytery of New York, at Londonderry, testified to by the Rev. Dr. Dana.*

LONDONDERRY, *Feb.* 11, 1783.

The Associate Presbytery of New York met at the house of Deacon Samuel Fisher, and was constituted by prayer by Mr. David Annan, moderator.

* * * * * * *

LONDONDERRY, *May* 19, 1783.

The Associate Reformed Presbytery met this day pro re nata, and was constituted by prayer by the Rev. David Annan, moderator; sederunt, Rev. Messrs. Robert Annan, David Annan, and William Morrison, ministers, &c.

Mr. Robert Annan laid the situation of the congregation in Boston before the Presbytery, as being destitute of the powers of government. The Presbytery appointed Mr. Annan to moderate in an election of elders in that congregation, and to admit them as he saw fit.

* * * * * * *

PETERBOROUGH, *Sept.* 2, 1783.

The Presbytery met according to appointment.

A letter from Boston, impowering the Rev. David Annan to act as a commissioner for and in behalf of the Presbyterian church in Long Lane, as also an earnest request from that society for the speedy settlement of the Rev. Robert Annan in that church, were presented and read. In answer to the request of the Presbyterian society in Boston, it was voted that the Rev. Robert Annan's instalment be upon the 25th instant, and that the Sacrament of the Supper be dispensed in that congregation on the Sabbath following. It was also voted, that the Rev. David Annan preach the instalment sermon and perform the instalment. * * *

*Feb.* 25, 1786.

The Associate Presbytery met at Londonderry, and was constituted by prayer by the Rev. Robert Annan. * * *

Respecting the call to the Rev. Robert Annan from the congregation of Wallkill and Little Britain, it was agreed that the consideration of said call be deferred to the next meeting of the Presbytery, and that in the mean time intimation be given to the Presbyterian congregation in Boston, that they may show reason, if any they have, at next meeting of Presbytery, why said call should not be sustained. * * * * * * * *

On motion made, it was voted that the Rev'd Robert Annan, in case of a voyage to his native country, be impowered to apply to any sound ecclesiastical judicature in that nation, for the purpose of obtaining a number of young preachers, such as shall appear to

be well qualified to promote pure and vital religion and evangelical doctrine in America, and that he use his best endeavors for that purpose, and also that he be further impowered to give a fair representation of our churches in America, and use his best efforts to accomplish a reconciliation between our Synod and that of our brethren at Edinburgh.

* * * * * * *

MAY 1, 1786.

Voted, that Mr. Morrison be appointed to write a letter to the Synod giving reasons why the attendance of this Presbytery at the Synod has been so much omitted, and also requesting the appointment of some candidates to New England.

*Extract from the Records of the Church Sessions of Londonderry.*

LONDONDERRY, *March 2d*, 1729–1730.

Session met. James Reed appointed to attend the Presbytery at Boston. His charges for man and horse, and time, to be paid by a collection.

June 19th, 1734.—Mr. Moorhead, moderator. A case under consideration, which said Presbytery could not finally determine.

The Rev. Alexander Blaikie was then called, and testified as follows:

*Rev. Alex. Blaikie's Testimony.*

This book I hold in my hand bears the date of 1726, and purports to be the record of the Session of the Presbyterian Church of Londonderry—a single church. These are the records I procured from New Hampshire yesterday, from the house of the late Rev. Mr. Parker. I received the book in the house of his son, yesterday. I am pastor of the First Associate Reformed Presbyterian Church of Boston. I am one of the relators in this bill. I came here (to Boston) on the 22d of May, 1846, and have resided here ever since. I became pastor over my present congregation, according to my own recollection, on the 18th of July, 1847. I came here from the Associate Reformed Synod of New York. I was then a member of that Synod, and had been since the 29th of January, 1836. Previous to this, I belonged to another Presbytery in the same Synod with that of the Presbytery of New York—the Presbytery of Caledonia, in Genesee county, New York. I have been in the ministry ever since my ordination, on the 10th day of October, 1831. Previous to my connection with this church, I belonged to what is called the United Church of Scotland in the province of Nova Scotia. It is there called the Presbyterian Church. It is known in Scotland as the United Presbyterian Church of Scotland. I have been connected as a minister with the Associate Reformed Presbyterian Church of the United States since the

month of October, 1834. In the spring of 1834 I came to the States, and since that year I have been a minister of the Reformed Church. I am now attached to the Presbytery of New York, subject to the Associate Reformed Synod of New York. I have been connected therewith since October, 1846. My congregation belongs to the same Presbytery. They have not belonged to any other. They were organized by the authority of the Presbytery of New York.

Previous to and in 1850, or prior to the filing of this bill, there were about 300 hearers in my congregation. In June, 1850, (the annul returns are made to the Synod in that month,) the number of communicants was 130. The number now is 185.

*Cross-examined by Mr. Bartlett.*

I know John W. Emory. I have seen the name signed by him—[witness here identified the signature of Mr. Emory in a record of the Federal street church relative to the transfer of pews.]

Ques. Mr. Blaikie, by whose advice did Mr. Emory purchase a pew?

Mr. Adams. I am the one to put that question to. It was done by my advice.

Mr. Bartlett. I asked the question of the witness. Was there an arrangement made to have Mr. Emory purchase a pew then?

Ans. It was done by the advice of Mr. Adams. He worshipped there until a commercial arrangement took him elsewhere. The advice did not extend to the number of Sundays he should worship there. Mr. Emory paid the taxes on the pew while in the country, and since he left they have been paid by Mr. Adams or by our committee, and sometimes by myself. Since he has been away Mr. Adams or myself have paid the taxes upon the pew.

Mr. Adams. We have no hesitation, please your honor, in stating to the court, and to the counsel opposite, that the object in purchasing this pew was to secure certain legal rights which a relator would have under the information filed by the Attorney General; and we undertake to say that the pew was purchased for the purpose of securing a legal standing in this case.

The case for the relators was here closed.

*Defendants' Case.*

The defendants put into the case the act of incorporation of the Federal street church, dated June 15, 1805.

*Testimony of George Ticknor, Esq.*

I am 61 years and 7 months old to-day; I am a worshipper at the Federal street church, and have been since 1812, whenever I have been in the country. Most of that time I have been a pew-holder; I became a pew-holder, I think, not earlier than 1821 or 1822; since I was married, or soon after.

Ques. Please to state how far back your knowledge and recollection extends of the occupation of these premises by the present congregation.

Ans. I remember, without being able to fix a particular date to it, the old church, as it stood there before the Rev. Dr. Channing was settled; I happened to be present at his ordination; I do not recollect in what year it occurred from my own recollection; I remember that the present meeting-house was built a few years afterwards; I am sure it had been built several years when I began to worship there in 1812; I remember the building of the new meeting-house perfectly well, but not the date when Dr. Channing was ordained in the old meeting-house; this was as early as 1803. I should say, from my own recollection, it was somewhat earlier, as I was a boy at the time, and remember being led in by my father. [It appeared that Dr. Channing was ordained June 1st, 1803.]

Ques. The congregation then, and that with which you were subsequently connected, is the same congregation, is it not, as that which now occupies that church?

Ans. From 1812; yes, sir.

Ques. I mean to say that the congregation which occupied the old church, where you saw Dr. Channing ordained, was the congregation which subsequently held in the new church, was it not?

Ans. Some of the members, certainly.

Ques. If I understand you, you mean to say that the congregation composing Dr. Channing's society, who used to worship in the old house—that same congregation, under him or Dr. Gannet, continued to occupy in the new house?

Ans. I was very young then, but I recollect certain person, like Deacon Wright, and other individuals, who I remember were at that ordination, and continued in the new church.

Ques. From your earliest recollection down?

Ans. Yes, sir, so far as I have any distinct recollection upon that subject.

Plaintiffs waived the right of cross-examining this witness, and Mr. James Savage was called to the stand.

*Testimony of James Savage, Esq.*

I shall be 70 years old in July; I worship in the Federal street meeting-house, and have done so since the summer of 1805; at that time the present church was not built, but the society worshipped in the old wooden church. The present church was built in 1809.

Ques. The present meeting-house or church was occupied by the congregation which before its erection had occupied and wor-

shipped in the old wooden church, was it not? I mean that the legal succession passed from one to the other.

Ans. As far as my recollection goes, they were the same persons in the old and the new meeting-houses.

Ques. Do you know anything about the parsonage; when that was built?

Ans. I remember when the parsonage was not there, when I was a little boy.

Ques. Can you fix in your mind when the parsonage was built and occupied, as your memory serves?

Ans. (After a long pause, and slowly,) the Rev. Dr. Channing lived there, in the parsonage house; it is considerably over forty years ago, I should say; I remember visiting there; his brother, the lawyer, lived there with him; I remember the church very well, because I lived close by it, and went to school.

The witness was not cross-examined.

The Rev. Dr. Ezra S. Gannett was next called to the stand.

*Dr. Ezra S. Gannett's Testimony.*

I am pastor of the church worshipping in Federal street. I have held that office twenty-nine and a half years—thirty years from the 30th of next June; since the death of the Rev. Dr. Channing I have been the sole pastor. That book [a manuscript volume being handed to him] is a book or Records of Baptisms and Marriages, which came into my possession at the time of my settlement—baptisms on one end and marriages on the other—which I received as the original book of those church records, from the commencement, and in which I subsequently recorded such events. This book [a large volume being placed in the witness's hands] I know less about. It came to me a year or two after the death of Dr. Channing, having been sent by Mrs. Channing. It was stated by her to have been found in a trunk belonging to Dr. Channing, among some other property of his.

The work was stated to be simply a copy in a legible hand of another record already put into the case, and was also put into the case.

A smaller work was then shown to the witness, who said:

That book came to me at the same time with the other and larger one. I have a most distinct recollection of the fact. It contains a copy of some previous records, and then some original records, in Dr. Channing's handwriting, of the members of the church admitted during different terms of the church; and on the other end I find a memorandum of deaths, and that is in Dr. Channing's handwriting. I have never used the book myself, having made similar entries in another book. I should suppose that first page [it being pointed out to the witness] was in Dr. Popkin's hand-

writing, the predecessor of Dr. Channing. [It was admitted to be in the handwriting of Dr. Popkin.] I have had that book in my possession for the last ten years.

Mr. Hillard. This book contains, please your honor, a copy of the original entry in the missing book referred to. It is here as contained in the original volume. I wish to prove it without the necessity of relying upon my own affidavit.

Mr. Hillard then read a "record of the vote by which the Presbyterian church in Long Lane changed, &c., &c.," and asked the witness if he had any recollection of having seen the original volume.

Ans. I have a recollection, to myself a satisfactory recollection, of such a volume, and such an entry, and yet I could not testify of that book with the same accuracy with which I have spoken of these volumes. I have been desired to make search for that missing volume, and have done so, but have not succeeded in finding it.

*Cross-examination by Mr. Adams.*

My recollection is quite imperfect as to when I last saw that missing volume. I think I last saw it in February, 1851. My reason for that opinion is that at that time the chairman of the standing committee of the society sent a note to me requesting and authorizing me to deliver certain books to the messenger for the use of the counsel in this case. As a voucher for my right to send these books, I kept that note among the church papers, and I find it is dated, I think, Feb. 4th, 1851. My impression is that that missing book was one of those I then sent, and I have not seen it since, that I have any recollection of. The books have not been returned to me since they were placed in the hands of those to whom I suppose they were delivered by the messenger.

*Mr. Elisha Bassett's Testimony.*

I am clerk of the proprietors of the meeting-house in Federal street. I have been in that office since the first of May, 1849. In that capacity I received a considerable number of books and documents from my predecessor in office. This book [a large volume was shown the witness] is the record of the doings of the proprietors, of the meetings of the proprietors, commencing about 1803 and coming down to the present time.

Mr. Hillard. It is the volume described in the answer.

Witness continued: I have made search for the missing book inquired for. It is not in my custody, and I have not been able to find it. [A still larger thick book was here shown to the witness.] These are the records of deeds of the pews in the meeting-house, commencing in 1810. When a transfer is made, the usage is that the old deed is surrendered and a new deed issued. It is my duty

to make a record of every transfer. [An entry in the book was pointed out to witness.] That is Mr. Emory's original signature, and that is a copy of the deed.

Mr. Hillard. The grantees of each pew sign themselves a receipt in the following words: "I, the above named John W. Emory, &c.,———May 18th, 1849."

*Cross-examination by Mr. Choate.*

All I know of the book described by Mr. Hillard is from the inquiries made of me; I have no recollection of such a book, or of ever seeing such a book. I do not know that I ever saw a book containing records of these proprietors earlier than 1803. The books were first placed in my hands, I think, on the day of my election as clerk, in 1849. I do not know how many books I received; there were many books of different sizes, from records of deeds down to small books. I have other books connected with the society. Part of them are in a trunk at my house, and a part are in my office, in this building. I do not recollect that any of them contain entries going back beyond 1803, unless it be a volume of records of deeds previous to this, which is a volume of records of the church. I do not recollect how many books I delivered to Mr. Hillard.

Mr. Hillard. I took a large number of books which I gave no receipt for; I took anything I wanted.

Witness continued: I think I looked at all the books I received, and knew somewhere near what they were. There were some small volumes.

Mr. Choate. Mr. Hillard, without having any unpleasantness on the subject—I am sure I do not see why there should be any in such a case—I would like to have you tell us something in relation to this lost volume.

Mr. Hillard. I stated, and my impression is very distinct, that I received that volume from Mr. Bassett, but I find that Dr. Gannett thinks I received it from him. These books were in my office sometimes in the safe, and sometimes out of it.

Mr. Choate. Were they ever accessible when Mr. Blaikie or any of us were present in your office?

Mr. Hillard. They might have been, but so far as I know—

Mr. Choate. What I wish to learn is, whether any blame, by implication or otherwise, is to be attached to us for the loss.

Mr. Hillard. Oh no, sir, by no means. I regard it simply as an unlucky accident, for which I am myself probably the most to blame.

Mr. Choate. That is sufficient, then, if it is conceded that we have never seen it.

Mr. Bassett was then directed, with consent of counsel for defendants, to place within the reach of counsel for plaintiffs all the books in his possession belonging to the Federal street church.

Mr. Bartlett then put in four certified records of the probate court. [Which were objected to.] The first was a document in relation to the Reverend John Morehead (or More), in which a pew in his own church, the Presbyterian meeting-house, is appraised as a part of his estate at the price of £7. The second related to a member of his church named John Quig, who on the 1st of March, 1754, by devise, did give and bequeath "my pew in the meeting-house in Long Lane," where the Rev. John More is pastor, &c.

The third relates to Samuel Sloan, and is dated 1769. He seems to have owned two pews in Rev. Mr. Morehead's meeting-house, which were appraised at £15 14s. and 8d. They were then members of that church.

The fourth concerns Robert Wilson, who owned a pew in Rev. Mr. Morehead's church.

It is shown by the records of the church that these were members of the church in '39 and '35. Passages of the records referred to were marked.

Mr. Bartlett said he had nothing further to offer in behalf of the defence.

COMMONWEALTH OF MASSACHUSETTS, *Suffolk, ss.*

The subscriber, register of probate for said county, hereby certifies that the estate of John Morehead, deceased, was appraised under warrant from probate court for said county, as appears by records of said clerk, lib. 73, fol. 176, and that in the inventory of appraisal is the following item:

"A pew in the Presbyterian meeting-house, Boston, £7;" and that said inventory was filed in said court, January 14, 1774.

Given under my hand at said Boston, this twenty-fifth day of February, in the year eighteen hundred and fifty-four.

H. M. WILLIS,
*Register Probate, Suffolk County.*

The following is extracted from book 66, fol. 27, Probate Records of Suffolk county for year 1767:

Boston, July 8th.—Samuel Sloan, of Boston, in the county of Suffolk, distiller, admitted by the judge administrator of the goods and estate of his late father, Samuel Sloan, late of said Boston, distiller, deceased, intestate, Andrew Black, merchant, and John Jenkins, baker, both of said Boston, became bound, with the said Samuel, for his faithful discharge of said trust.

Attest: JOHN COTTON, *Register.*

SUFFOLK, *ss.*

The subscriber, register of the court of probate for said county, hereby certifies, that the foregoing is a true copy from the records of said court. It is further hereby certified, that the appraised

value of the estate of said Samuel Sloan, as shown by inventory thereof, recorded in records of said court, book 67, fol. 216, (which inventory was accepted by said court March 31, 1769,) was £187 5s. 2d., and that in said recorded inventory appear the following words:

"Two pews in Rev. Mr. Morehead's meeting-house, £15 14s. 8d."

H. M. WILLIS, *Register.*

SUFFOLK, *ss.*

The subscriber, register of the court of probate for said county, hereby certifies that on the first day of June, A. D. 1759, Mary Willson, of Boston, in said county, was appointed administratrix of the estate of Robert Willson, formerly of said Boston, wharfinger, deceased, intestate; that the appraised value of the estate of said Robert Willson, (as appears by inventory thereof, recorded in records of said court, book 55, fol. 88, and allowed by said court Oct. 26th, 1759,) was £20 3s. 3d.; and that in said inventory appear the following words:

"One pew to the Rev. Mr. Moreheads, £7 13s. 4d."

Attest: H. M. WILLIS, *Register.*

COMMONWEALTH OF MASSACHUSETTS,

*Suffolk, ss.*

The subscriber, register of probate for said county, hereby certifies that the last will of John Quig, of Boston, in said county, silk-dyer, deceased, was proved in the probate court for said county, as appears by the records of said court, book 49, page 100, on the first day of March, A. D. 1754; and that in said will appear the following words: "Item. I give and bequeath to my wife, Mary Quig, my pew in ye meeting-house in Long Lane (otherwise Bury street,) whereof the Rev. John Morehead is pastor, to her use while she shall go there, otherwise to be disposed of for the use of John Quig aforesaid."

Given under my hand, at said Boston, this twenty-fifth day of February, in the year eighteen hundred and fifty-four.

H. M. WILLIS,
*Register Probate, Suffolk County.*

**The defendants introduced a book of records in which the marriages and baptisms were recorded by the minister of the society; and among the names of parties therein contained as having been so married were the names of the persons described as proprietors of pews in the four preceding extracts from the probate court.**

**Filed 19th Dec., 1859.**

Plan.

Returned to Clk-
Feb 1st/60.

# SUPREME COURT OF THE UNITED STATES.

No. 47.—December Term, 1861.

ATTORNEY GENERAL OF THE STATE OF MASSACHUSETTS, IN ERROR,

vs.

THE PROPRIETORS OF THE MEETING-HOUSE IN FEDERAL STREET, DEFENDANTS.

BRIEF FOR PLAINTIFFS IN ERROR.

## Part First.

GENERAL MERITS.

## STATEMENT OF FACTS.

The question to be determined in the present case, is of the right of the defendants, The Proprietors of the Meeting-house in Federal street, in the city of Boston, to hold, occupy, and enjoy the premises appertaining thereto, as the same are more fully described in the relator's bill of information; and also of the right of the said defendants to the rents, and profits derived from the rent of pews in the church occupied by the said defendants, and from the rent of land so occupied by them from the year 1814 to the present time.

The facts, as presented by the record,—comprising all such as are material to the questions at issue, and which are either admitted to be true, or substantiated by proof,—are to be adduced from the following general statement of the case.

By information filed in the Supreme Judicial Court of the Commonwealth of Massachusetts, by John H. Clifford, Esq., Attorney General of said Commonwealth, at the relation of the Associate Reformed Presbyterian Synod of New York; the First Associate Reformed Presbyterian Church and Society of Boston, the Rev-

Geo. S. Gideon, printer, 511 Ninth street, Washington, D. C.

erend Alexander Blaikie, pastor of the said church and society; Edward M. Stuart, John Taylor, William Elder and Samuel Gwinn, ruling elders of the said church and society, and the prudential committee for managing the temporal affairs of the said society, for and in behalf of themselves and the rest of the members of said church and society, and John W. Emery against "The Proprietors of the Meeting-house in the town of Boston," a corporation duly established by the laws of this Commonwealth, at December term, A. D. eighteen hundred and fifty; it is charged as follows:

That, on the fourteenth day of May, in the year of our Lord one thousand seven hundred and twenty-nine, one Henry Deering, of Boston, in the county of Suffolk, and Commonwealth of Massachusetts, conveyed in due form and for a valuable consideration, to one John Little, of said Boston, his heirs and assigns forever, a certain piece or parcel of land situated in said Boston, and bounded as in said bill of information is fully set forth and described.

That the said John Little "being minded and disposed to devote his property to the founding and supporting of a church and place of religious worship, to be held and enjoyed forever, for the preaching and maintaining of the doctrine, discipline, worship, and form of government of the church known as the Presbyterian Church of Scotland, and to create and found a trust and charity therefor," did, thereafter, to wit, on the 9th day of June, in the year of our Lord, A. D. 1735, enter into and execute an indenture of that date, duly executed and recorded, and for a valuable consideration, did convey with warranty, the premises last mentioned, particularly describing the same, together with the meeting-house then standing thereon, to George Glen, William Hall, William Shaw, and Andrew Knox, of said Boston, "for themselves, and as a committee chosen and appointed by the rest of the congregation belonging to the Presbyterian meeting-house in Long Lane, in Boston aforesaid, for managing the prudential affairs thereof," saving and reserving to the said John Little, his heirs and assigns forever, his right, title, and interest in and to a certain pew and seat in said meeting-house.

And in the limitations, conditions, and establishing of the said trust, by the same deed the said John Little did further recite and declare, that the said piece or parcel of land, meeting-house and premises, with the appurtenances thereto belonging, saving and reserving as aforesaid, were to be "held and enjoyed by the said George Glen, William Hall, William Shaw and Andrew Knox, in their capacity aforesaid, and by their successors in that trust and office, forever; but to and for the only proper use, benefit and behoof of the said congregation, according to the tenure, and after the same manner, as the Church of Scotland holds and enjoys the

lands whereon the meeting-houses are erected forever, and for no other use, interest or purpose whatsoever."

That the said John Little and the said George Glen, William Hall, William Shaw, and Andrew Knox, together with certain others, then living in said Boston, being Presbyterians, and strongly attached to the doctrine, discipline and worship of the church known as the Presbyterian Church of Scotland, being minded and disposed to vote their property to the founding and supporting of a church and place of religious worship, to be held and enjoyed forever, for the preaching and maintaining of the said doctrine, discipline and worship, and to create and found a trust and charity therefor, did severally contribute, the said John Little, the land in said deed mentioned, in whole or in part, and the said George Glen and others, moneys wherewith the said meeting-house was built, and the expenses attending the premises, were defrayed; and did thereafter, in and by the said indenture, create and establish the said trust and charity;

That the said deed last mentioned, with the said limitations and conditions, and with the trust so created and established, was accepted by the said George Glen and others, as the same was intended to be conveyed by the said John Little, and by the said John Little, George Glen and others as aforesaid, and by the said deed, and was so held by the said grantees, in trust, according to the terms of the same, for the sole use, benefit and behoof, of the said congregation, in said deed mentioned, and their successors forever;

That the said deed so made by the said John Little, and so accepted by the said George Glen and others, created a trust or charitable estate of a very high character, to wit, for the support, encouragement and advancement of the Christian religion according to the Scotch Presbyterian worship, government, discipline and belief; which said trust or charitable estate the said John Little, and the said John Little, George Glen and others, had good right to create and establish, and the said George Glen and others had good right to accept, and did accept;

That the said meeting-house and land were granted and conveyed as aforesaid by the said John Little, and the said John Little and others, with the express understanding, and no other, that they were always to be held and enjoyed by the said George Glen and others, and by their successors in office, forever, for the sole use and benefit of the said congregation in said deed mentioned, which was a Presbyterian cogregation, and for the use of a Scottish Presbyterian society or congregation, and by and for no other person or persons, society or societies;

That the limitations and conditions of said deed expressly restrict the use, occupation and enjoyment of said premises to a Presbyterian Trinitarian Society, and none other, and prohibit the

same to the use and enjoyment of any other society, and especially that of a Congregational Unitarian Society.

And it is further charged, that the tenure by which the Church of Scotland held and enjoyed the lands whereon the meeting-houses were erected, in the year 1735, was a strict tenure, by which, whenever a society, parish or congregation of the said church ceased to be Scottish Presbyterian, in any respect, the said society, parish or congregation, by the mere fact of the case, ceased to hold and enjoy the lands whereon the meeting-house was erected, and that the same thereby passed, as a matter of course, into the jurisdiction and possession and under the control of the General Assembly of the Church of Scotland, or of the proper authorities acting under it, to be used and enjoyed by another Scottish Presbyterian Society, parish or congregation, who might wish to occupy the premises, and none other;

That according to the said tenure, by which the said land and church in Long Lane were to be forever held, no Unitarian Society could hold lands under the Church of Scotland, nor could any Scottish Presbyterian Society subsequently becoming an Unitarian Society; but the same, in such case, reverted to the General Assembly of the Church of Scotland; or to their proper agents or authorities;

That the Church of Scotland, in the year 1735, was a Presbyterian Chuch in form, faith, government and discipline, and not a Congregational Church;

That it was a Calvinistic Trinitarian Church, teaching the "confession of faith and catechims, known as the larger and shorter Westminster catechisms, doctrines, forms of government, discipline, etc., then of public authority in the Church of Scotland;"

That it was in no respect an Unitarian Church, but in matters of form, faith, government and discipline, opposed thereto, and especially to the forms, faith, government and discipline of the Unitarian Church or Society now occupying the premises in said bill described;

That the said church continued, from the said year 1730 down to the year 1786, to be a church after the form and pattern of the Church of Scotland;

That the said congregation, mentioned in the said deed of John Little, was in all respects a Presbyterian congregation, after the manner and constitution of the Church of Scotland;

That a principal and prominent part of said faith, professed by said society in Long Lane, is inconsistent with and opposed to the faith and belief called and known as Unitarianism, now held and professed by the defendants;

That the said John Little, George Glen and others, were attached to the said church, and were not Congregationalists nor Unitarians, but were Scottish Presbyterians, and did not intend to establish,

and did not establish, the trust aforesaid for the use, benefit, or behoof of any Congregational or Unitarian Society, but for a Scottish Presbyterian and Trinitarian Society, and none other;

That a material part of the form of worship in said Church of Scotland, and one of its distinguishing features is the use of a particular version of the Psalms of David—the version known as that of Rouse; that the said version, and no other, was used in all the Presbyterian Churches in Scotland in the year 1735; and that the said version, and none other, was used in said church in Long Lane at the establishment of the same, and down to the year 1786;

That the same is the only one now used or ever used by the Associate Reformed Presbyterian Church in this country; that it is the only one ever used by the church and society present as relators, and the only one used in this country by Presbyterian Societies of Scottish origin;

That the said confession of faith, catechisms, directories, forms of church government, discipline, etc., which were of public authority in the Church of Scotland in the years 1725, 1730, 1735, 1783, and 1786, as far as they are or were adapted to the civil government of the said society and church in Long Lane, at the periods above mentioned, were identical with those known as the Constitution and Standards of the Associate Reformed Presbyterian Church of North America, which have always been the rule of Presbyterian societies of Scottish origin in this country, and which are now and have always been professed and taught and conformed to by the Associate Reformed Presbyterian Synod of New York, here present as relators, and by the First Associate Reformed Presbyterian Church and Society of Boston, here present as relators;

That the church known as the Associate Reformed Presbyterian Church of North America, by which a large proportion of all the churches in this country of Scottish Presbyterian origin is now known, is, in all material matters, the same as the Ancient Church of Scotland, as it existed in the year 1735;

That the said association was made in or about the year 1782, and corresponds identically with the said Church of Scotland, in all matters of form, faith, government, etc., except as the same are altered or affected by the republican nature of our institutions.

The information then set forth that the congregation mentioned in the said deed of John Little was established about 1727, under the pastoral care of the Reverned John Morehead, a Presbyterian minister, of the school known as the Scotch Presbyterian, and previously a member of some presbytery in Scotland, and continued to flourish under his care as a Scotch Presbyterian Society, after the manner of the Church of Scotland, until 1773, when he deceased; that thereafter, for about ten years, they were without a pastor, except for occasional services; that in 1783 the Reverend Robert Annan, a Presbyterian minister, of the faith of the Church

of Scotland, a member of the Presbytery of New York, and subordinate to the Associate Reformed Synod of New York, was duly installed as their pastor, and so continued until 1786, when he removed from this Commonwealth; that in 1745 a presbytery was established by the said Morehead and others, consisting of twelve congregations, and called the Presbytery of Boston, to which the said society belonged, and continued to belong, until 1774, when the said society notified a temporary declinature therefrom, for a special and temporary purpose, as by the doctrine, discipline and government of the Scottish Presbyterian Church they had a right to do, and which wrought no change in the trust and charity aforesaid; that these congregations subsequently formed themselves into three presbyteries, and about 1776 were all joined in one body, called the Synod of New England, which continued to exist until 1782, when it was dissolved, and the church and Society in Long Lane then became connected with the Presbytery and Synod of New York, with which it ever afterwards continued to be associated; that all these changes and memberships with different presbyteries and synods, did in nowise alter, or in any way affect the relations of the church or society in Long Lane, in matters of faith, government, worship or discipline, with the Church of Scotland or the Associate Reformed Presbyterian Church of this country, but were merely changes of convenience or necessity in matters of discipline.

The information then alleged that Annan was duly and legally called from the said Presbytery of New York, to the pastoral charge of the society in Long Lane, by their vote and request; and that measures were taken between said society, said presbytery, and Annan, by which the relation of dependence and control was recognized, and Annan was by said presbytery duly installed in 1783; and removed by them in 1786, at his own request; and that said Presbytery and Synod of New York have never relinquished or discharged their claim or right to control, govern and direct the church and society in Long Lane, but continue to this day to claim such right.

It then alleged that the society and church, here present as relators, known as the First Associate Reformed Presbyterian Church and Society of Boston, was duly organized by the Presbytery of New York, as a religious society, after the Presbyterian order, in 1846, as connected with and under the jurisdiction of the said Presbytery and Synod of New York, a religious body, duly established, having full supervisory power in ecclesiastical matters over all the churches connected with it, and especially over the church and society here present as relators. That the Reverend Alexander Blaikie, here present as a relator, is minister of the said Presbyterian church and society of Boston, and is, and for many years before 1846, was, a member of the Synod of New York, and was

duly installed in his said ministry by the said Presbytery of New York; that this church and society have always professed and taught the same faith, and conformed to the same discipline, as did the said society in Long Lane, mentioned in the deed of John Little, according to the standards and constitution of the Church of Scotland in 1735, excepting as they are necessarily modified, to conform to the civil government under which said church and society is placed.

The information then set forth that in 1786 a majority of the congregation belonging to the church in Long Lane, contrary to the intentions of Little, and of said Little, Glen, and others, as expressed in his deed aforesaid, and contrary to the said deed, and contrary to the trust and charity aforesaid, and contrary to right, resolved themselves into a society different from a Presbyterian society; and have ever since continued, with various changes of form of worship, faith, government and discipline, to be a society other than a Scottish Presbyterian society; that a minority of the congregation objected to the change at the time, and desired to remain under the ancient form of Presbyterian worship, government and belief, but was overborne, and obliged to submit to the wrong and injury done by the majority; whereupon the said trust was wholly perverted, abused and misapplied.

The information then alleged that, in 1787, the Reverend Jeremy Belknap, an Orthodox Congregational minister, and not a Presbyterian minister, after the order of the Church of Scotland, nor a member of any Presbytery of North America, was installed over the said church and society as minister and pastor, by the Orthodox or Congregational form of installation, and not by the Presbyterian form; and that the Presbytery of New York did, with the minority of the said congregation, object to this installation, and to the action of the majority, and did not consent thereto; that said Belknap and said society made great changes in the forms of worship, rules of discipline, and opinions of belief, and introduced a new version of psalms and hymns; and the said meeting-house and lands continued, from 1786 to 1815, to be occupied contrary to the intention of Little, and of Little, Glen, and others, and contrary to the said deed, and to the trust and charity aforesaid, and contrary to right, by a society professing to be an Orthodox and Trinitarian Congregational society as aforesaid.

It further alleged that, in 1815, the said congregation again changed its form of faith and discipline, and became, and has ever since continued to be an Unitarian society or congregation; and by this last change, the said trust became, and was wholly perverted and abused, and misapplied, in that the Presbyterian discipline and worship of the Church of Scotland was wholly overturned, and another discipline and worship substituted in its stead; and the distinguishing forms of faith of the Presbyterian church were

wholly abrogated and denied, and other doctrines, hostile to those, publicly taught in the pulpit of said church, and believed and professed by the said congregation; that in 1735 Unitarianism was not known, and could not by law exist, in Great Britain, Scotland, or the Colonies of Great Britain; and that the meeting-house and lands, in said deed of John Little mentioned, are not now held and enjoyed by the same tenure as that by which the Church of Scotland held and enjoyed the lands whereon its meeting-houses were erected in the year 1735.

The information further alleged that John W. Emery, one of the relators, is a pew-holder of the said church, now in the possession of these defendants, and is desirous that the said land and church should be given up, and the occupation be decreed to belong to the First Associate Reformed Presbyterian Church and Society of Boston.

It then alleged that the premises conveyed are those known as the meeting-house, formerly called Dr. Channing's church, and now occupied by the Unitarian society, worshipping under the pastoral care of the Reverend Ezra S. Gannett, D. D., with the lands now in the occupation and possession of the said society, which society was duly incorporated in 1805, (St. 1805, c. 19,) and that possession was formally demanded in 1849, and refused.

The information then alleged that the equity of this bill was in no manner weakened or impaired by reason of the lapse of time, or of any delay in the making of the said demand for the said premises, because no plea of time or of the Statute of Limitations can be made as a defence to the perversion or abuse of a charity or trust, on a bill of this nature; because these relators have never done any solemn or public act by which they recognised the right of these defendants, or of any one to use or enjoy the premises here sought to be recovered; because the First Associate Reformed Presbyterian church and society have had no existence in this Commonwealth until since the year 1846, and were not advised of their rights in the premises until a few months previous to the making of the said demand above mentioned; because the said minority who were opposed to the change made by the said congregation in the year 1786 were a feeble company, unable to strive with the said majority; and because the said change first made by the said majority in the year 1786 was a change in discipline and form of worship, and not a material change in doctrine, for which reason the said minority were less urgently and immediately moved and incited to take active measures for redress of the breach of trust, and the perversion of the charity herein complained of; but that the change in 1815, by which the society became a Unitarian society, was a very material one, both in discipline, forms of worship, and opinions of belief, and was a change never contemplated by the said minority or by the majority in the year 1786, and would not have been per-

mitted by the said minority, or the said majority, had it been attempted to be made while they had the power to resist it, and was made after the said minority and the said majority, or the most of them, were deceased; and that the jurisdiction of this court in matters of trusts and charities has not been, until within a few years past, sufficient for the full and proper consideration of matters of this nature.

And the information alleged that the premises were of great value; and prayed for a discovery for an establishment and carrying into effect of the trust, for an account of the rents and profits received by the respondents for a removal of the respondents, an appointment of new trustees, and a delivery to them of all deeds and papers relating to the trust, and for further relief.

The Respondents, in their answer, upon the oaths of their prudential committee, say that they were made into a corporation by an Act of the Legislature passed on the 15th of June, 1805, and are the true and sole owners of the premises demanded in the bill, in virtue of said Act or of possession under it, and that this act was passed on the application of persons who, prior thereto, as owners of pews, were tenants in common of the land and house; that the charter was accepted, and they have ever since been in open, exclusive, and undisputed possession, and have expended large sums of money in improvements, and especially in the erection of a new building for public worship; and submit that this possession for nearly fifty years should operate by way of confirmation and assurance to their title, even if originally defective, which they deny; and they rely upon this possession, and upon the statutes limiting actions, by way of bar, as if specially pleaded.

They admit the deed from Deering to Little, for the nominal consideration mentioned; but say that the true consideration of the said deed is hereinafter set forth. They admit the deed from Little to Glen and others; but they deny that it was made by Little with the intention of creating, or that it did create, a charitable estate for the support, encouragement, advancement and perpetuity of the Christian religion, according to the Scotch Presbyterian form, or that any charitable use was created thereby, or sprung therefrom, or that it was so accepted by the said Glen and others, or that it was in any sense a gift, or coupled with any immutable condition, or that it was the intention of Little to restrict the use and occupation of the premises to a congregation worshipping after the form, and governed by the discipline of the Scotch Presbyterian Church, and none other; or that he had any right to make any such restriction or limitation whatever.

And they say that Little was simply one of numerous associates who undertook to build, and did build, for their common use and benefit, a meeting house on the land in question, in the conducting of which matter, and the purchase of said land, Little was the

common agent of all the associates; that in the course of time a controversy arose between the said parties composing the said congregation on the one hand, and Little, as their agent, on the other, and was referred to three arbitrators, who, under date of April 9, 1735, made their award, a copy of which was annexed to the answer, and is set forth in the margin; and that Little made the deed to Glen and others, in pursuance of this award; and that, in the said enterprise, Little devoted no part of his property, further than his contributory share, for which he was reimbursed by the reservation in the deed of a pew and seat in the meeting-house.

They deny that Little, Glen, Hall, Shaw and Knox, and the other associates, contributed land and money to found and support a Scotch Presbyterian Church, and to create a trust or charity therefor; and aver that they contributed to the purchase of the land and the erection of the meeting-house, without any intent to create any charity, but with the simple purpose of erecting a meeting-house for their common use, to be held by them in proportion to the sums by them respectively contributed, and received equivalent rights, as pew-holders, as a full consideration for their contributions. They deny that Little, Glen, Hall, Shaw and Knox had good right to create and establish, or to accept, any such trust or charitable estate, and allege that they were bound by the award to execute a good conveyance to the congregation, by whose contributions and for whose benefit the land was purchased and the meeting-house built. And they do not admit that it was the intention of said Little, Glen, and others, that the land should be forever used and enjoyed by a Scottish Presbyterian Trinitarian Society, and none other.

They say that by said deed the legal estate vested in the grantees in trust, but the beneficial estate was in the pew-holders or *cestuis que trust*, and the trustees had no other substantial benefit than as pew-holders, and thus the land and building were then purchased, acquired, owned and held by the associates as their private property, over which they had absolute dominion, and full power to change the use to which the same might from time to time be appropriated; that under this conveyance the trustees and *cestuis que trust* continued to use and enjoy the said premises, using the form of worship and church government mentioned in the deed, but that the entire interest, property and control was vested in the said trustees and *cestuis que trust*, being pew-holders, as tenants in common; that the title to each pew was a conveyance from the prudential committee, who were chosen from time to time, as vacancies occured, by the pew-holders; and that the proprietor of each pew had the right to sell and dispose of the same, like any other property, subject only to the condition of offering the same to the prudential committee at its appraised value. And they deny that Little or any other person made any charitable gift, or that any

public charity was created or provided for; and therefor aver that this court, on this information and bill, has no jurisdiction over the same.

They say that they do not know the tenure of the lands held by the Church of Scotland in 1735, but that if the facts and principles in regard to the tenure of lands held by the Presbyterian congregations in Scotland are truly set forth in the bill, they do not support this claim, because they flow from the fact that Presbyterianism was the established religion of Scotland, and as such, recognized by law and clothed with peculiar privileges; but in Massachusetts, while a colony and province, and since it became an independent State, no form of faith or church government has ever been established or had any special privileges conferred upon it by law.

They admit the doctrine, government and discipline of the Church of Scotland in 1735, as set forth in the bill, and that they are opposed to Unitarianism, as professed and taught by the respondents; do not know whether the society in Long Lane conformed in 1735 to the faith and discipline of the Church of Scotland, nor what version of the psalms was used by said Church of Scotland or by said society, nor whether Little, Glen, and others were Congregationalists or Unitarians or Presbyterians; deny that said society continued until 1786 to be Presbyterian in all respects, and affirm that the pew-holders had the exclusive interest in and control over the premises, and they, or a majority of them, had at all times a right to withdraw from the Presbyterian denomination, and about 1773 did so withdraw, with the purpose of changing their form of worship, and remained independent for ten years, choosing for themselves the ministers by whom occasional services were supplied to them. They admit that the society was under the care of Morehead from 1727 to 1773, and of Annan from 1783 to 1786; but profess their ignorance as to the matters stated in the information concerning the Associate Reformed Presbyterian Church of North America, the connection of the society in Long Lane with the Presbytery of Boston, the Synod of New England, and the Presbytery and Synod of New York till 1782; deny that it since continued to be connected with the last; and do not know whether the relations of this society were effected by these changes; and profess their ignorance of the matters alleged concerning the establishment of the Presbyterian Society in Boston in 1846, its faith and discipline, its relations to the Presbtery of New York, and the settlement of Blaikie.

They say that the proprietors of the meeting-house in Long Lane, in August, 1786, did, by a unanimous vote of all persons legally or equitably interested in the said land and meeting-house, embrace the Congregational mode of government, and resolve themselves into a church and society different from a Scotch Pres-

byterian Church and Society, and that the same has ever since continued to be so. They admit the installation of Belknap, a Congregational minister, in the Congregational form, and that he introduced a new collection of psalms and hymns; but we do not know whether a minority of the congregation, or the Presbytery of New York, objected to his installation, nor whether he made any other changes in the forms, discipline or belief, of the society; admit that the premises have ever since been used and occupied by a Congregational Society, and that, after the date of said installation, the opinions of the pew-holders and society underwent a gradual change, and they became a Unitarian Society, but do not know at what particular time the said change took place, or whether it was in 1815. They admit that said society is, and has been for many years, a Unitarian Society; but deny that the change in form of government in 1786, or this change of faith, was a perversion and abuse of the trust asserted to have been created by Little, and by Little, George Glen, and others, or that it was contrary to the said deed, or that any trust or charity was created thereby.

They profess their ignorance, whether in 1735 Unitarianism was known or could legally exist in Great Britain, Scotland, or the colonies.

They admit that John W. Emery is a pew-holder in the church named in the bill, but do not know whether he is desirous that it should be given up.

They admit that the premises in dispute, are those known as Dr. Channing's Church, &c., and that a demand was made and refused, as stated in the bill.

And they deny that said meeting-house and land, so conveyed by Little, were intended by Little, Glen and others, for the sole use, occupation and enjoyment of said society in said deed mentioned, and of their successors forever, in the manner as is stated in the bill, or that the same should be forever exclusively enjoyed by a Scottish Presbyterian Trinitarian Society; but they aver that said conveyance was intended by the grantor and grantees, and the other parties interested in the erection of said meeting-house, for their use, enjoyment and disposition, as set forth in the answer.

It is conceded by the Answer that the land was bought and the house built by the contributions of the members of the congregation, including John Little. (Answer, 42, 48.)

The Amended Answer alleges that the contributors were reimbursed by pews. This was an afterthought, and not in the original answer. It is not supported by evidence. As to Little, the award does not show that his pew was a reimbursement. (p. 64.) And as to the others, there is no evidence that they had any pews.

The Referees not only settled the pecuniary relations between John Little and the other contributors, but determined the condi-

tions of the enjoyment of the land by the congregation. (Award, p. 64.)

In the indentures made in pursuance of the award, this part of the bond was followed literally, and the clause adopted *verbatim*. (Indentures of trust, 39.)

This was either because the referees were empowered to do so, (Answer, p. 64, "with conditions for the performance thereof,") or, because such being the intent of all parties to the foundation, it was thought best and most safe to insert the terms of the trust in the award by mutual consent. Whichever way it may have been, the terms were specified, followed, adopted, and assented to by all parties.

## CONSIDERATIONS OF LAW.

### I. *The Indentures a Trust Contract.*

Upon the foregoing facts and circumstances, illustrating the manner in which the conveyance of the land in question was originally made, and the object which it had in view, the question now is: Do the indentures, as they are properly to be interpreted in the light of these facts and circumstances, establish a trust?

To this point, the following considerations are adduced:

1. The parties to it are contributors, who bought land and erected a house to be used for the benefit of the congregation, as they say, "forever, and for no other use, intent, or purpose whatsoever." p. 39.

2. The grantees in the deed act in an official capacity, "in their capacity aforesaid, and their successors in said trust." 37, 38. The Habendum is to them, "in their capacity aforesaid, and their successors in that trust and office forever." It then declares a trust in favor of the congregation, "but to and for the only proper use, benefit and behoof of the said congregation * * * * forever, and for no other use, intent, or purpose whatsoever."

3. Besides declaring the trust in this twofold way, first by declaring the grantees to be acting in a trust capacity, and, secondly, by the specification of the *cestius que trust* in the *Habendum* clause, the indentures add *a limitation upon the trust*, viz: that which is indicated in the Award, that the congregation shall "enjoy the lands" only "after the same manner as the Church of Scotland hold and enjoy the lands whereon the meeting-houses are erected."

## II. *The Trust a Charitable Use.*

1. This conveyance could only be upheld as a charitable use. (1.) The grantors could not take, in their official capacity, and transmit to their successors, as they were not a corporation. (2.) The *cestius que trust* were not a corporation, and are indefinite, and, as an ordinary trust, it would be bad. (3.) The legal estate could not vest in the beneficiaries, under the statute of uses, for the same reasons. The case is like that of Earle vs. Wood. 8 Cush. 430.

The conveyance could only be upheld on the peculiar principles and privileges which the law accords to those gifts or donations technically known as charities.

Earle vs. Wood, 8 Cush. 430.

2. It has been treated as such for seventy years, from 1735 to the act of incorporation in 1805. There have been no deeds from the heirs of the grantees, who took as tenants in common; but it has been treated as a charity, and the title declared by the legislature, Act June 15, 1805, § 1, to be in the pew corporation, § 4, "subject to all the duties they have heretofore been subject to."

3. The provision for the perpetuity can be upheld only upon the ground that it is a charitable use.

The law applicable to the subject of charities, so far as pertinent to the present case, may be synoptically presented as follows:

A charity is a dedication of property to the advancement of religion, the relief of the poor, or other objects of general public utility, and is exempted from the ordinary requirements, prohibitions and restrictions, imposed by law on the tenure, conveyance and use of property, in the following particulars:

*a.* There need be no devisee or grantee capable of taking and holding by law.

*b.* There need be no *cestuis que trust*, sufficiently definite to enable a court of equity to execute a trust upon its ordinary principles.

*c.* Perpetuities are permitted.

*d.* The statute of limitations does not operate against them, either strictly at law, or by analogy in equity.

*e.* There is ordinarily no reversion to the heirs; but if the specific object fails, the charity is applied *cy. pres.*

*f.* Defects in tenure and conveyance are supplied.

2 Story on Eq., §§ 1136 and seq., 1161, 4171, 1187, and seq.

Shelford on Mortmain, 59, 61, 71, 100.

Duke on Charitable Uses, E. 10.

Bacon's Abridg. Charitable Uses, E.

Boyle on Charities, 51, 52.
1 Spence Eq. Juris. 587.
Earl vs. Wood, 8 Cush. 430.
Parker vs. May, 5 Cush. 336.
Winslow vs. Cummings, 3 Cush. 358.
Going vs. Emery, 16 Pick. 107.
Hadley vs. Hopkins Academy, 14 Pick. 253.
Attorney General vs. Pierce, 2 Atk. 87.
Attorney General vs. Pearson, 7 Sim. 290.
Shaw vs. Wilson; 9 Cl. and Fin. 355.
Attorney General vs. Christ's Hospital, 3 Myl. and K. 344.
Incorporated Society vs. Richards, 1 Dru. and War, 258.
Inglis vs. Sailor's Snug Harbor, 3 Pet. 118.
Vidal vs. Girard, 2 How. 127.
Kniskern vs. Lutheran Churches, 1 Sandf. Ch. 439.
Gable vs. Miller, 10 Paige, 627.

Upon all these authorities the gift in question creates a charity.

III. *The Uses Religious.*

1. It was for the advancement of religion. The use of the land is not limited to the meeting-house, but is open to any of the proper objects of a religious society, a pastor's house, a parish school, parish library, &c.

2. It is no objection that it was established by the contributions of several persons, and not by the gift or devise of any one.

Attorney General vs. Drummond, 1 Con. and Laws, 210.
Remarks of Sugden, Ld. Ch. p. 220.
Attorney General vs. Pearson, 7 Sim. 291, 3 Meri. 353.
Craigdallic vs. Aikman, 1 Dow. 1, 2 Bligh, 529.
Milligan vs. Mitchell, 1 M. and Cr. 72.
Miller vs. Gable, 2 Denio, 492.
St. Mary's Church, 7 S. and R. 517.
Robertson vs. Bullions, 9 Barb. 65.
Gass vs. Wilkite, 2 Dana, 178.
Curd vs. Wallace, 7 Dana, 190.
Attorney General vs. Monroe, 2 De Gex and Smale, 122.
Attorney General vs. Murdock, 7 Hare, 455.
Same on Appeal, 12 Eng. Law and Eq. Rep. 83.
People vs. Steele, 2 Barb. 397.

3. There is no evidence that the contributors reserved a pecuniary interest to themselves. If they did, it would be no objection. Such is usually the case with gifts by living persons for the advancement of religion.

Gass vs. Wilkite, 2 Dana, 178.

## IV. *The Uses Public.*

The gift was of a sufficient public character to entitle it to the privileges of a charity. By public character, the law means only that it shall not be for the relief of specific persons, as mere personal benevolence to them.

Shelford on Char., 75 et seq. 61—65, 71.
Spence's Eq. Juris., § 587.
Story Eq. Juris., § 1164.
Atty. Genl. vs. Pearson, 7 Simons 291.
Shore vs. Wilson, 9 Cl. & F. 351.
Atty. Genl. vs. Drummond, 1 Con. & Laws 210.
Rex vs. Barker, 3 Burr, 1215, 5 Com. Dig. 25.

In the United States, no distinction is made among denominations in this respect.

In Massachusetts, voluntary religious societies, whether incorporated or unincorporated, have always been held to be of a public character, and proper subjects of information or mandamus.

Parker vs. May, 5 Cush. 336.
Earle vs. Wood, 8 Cush. 430.
St. Luke's Church vs. Slack, 7 Cush. 226.
Const. of Mass., Part 1, Art. I. Amend. Art XI.
Rev. Stat., chap. 20, § 3.
Hollis St. Ch. vs. Pierpont, 7 Met., 495.
Stearns vs. Bedford, 21 Pick. 114.
Sheldon vs. Easton, 24 Pick. 281.
Thompson vs. Rechoboth, 5 Pick. 469.
Burr vs. Sandwich, 9 Mass. 277.
Avery vs. Tyrlingham, 3 Mass. 161.

So, in other States of the Union.

Runkel vs. Winemuller, 4 Halst. 429.
Green vs. Afr. Meth. Soc. 1 S. & R. 254.
People vs. Steele, 2 Barb. 397.
Brosius vs. Renter, 1 Har. and J. 551.
Miller vs. Gable, 2 Denoi, 492 & 10. Paige, 627.
St. Mary's Curch, 7 S. & R. 517.
Kniskern vs. Lutheran Church, 1 Sandf. Ch. 489.
Robertson vs. Bullions, 9 Barb. 65.
Curd vs. Wallace, 7 Dana, 190.
Wright vs. Tr. of Meth. Ep. Ch. 1 Hoffm. Chan. Rep. 202.
Griffin vs. Graham, 1 Hawks. 96.
Ref. Dutch Church vs. Mott, 7 Paige, 77.
Beatty vs. Hurtz, 2 Pet. 584.
Gibson vs. Armstrong, 7 B. Munroe, 481.
State vs. Crowell, 4 Halst. 390.

This was a gift for the advancement of religion, not limiting the use of the land to the meeting-house, but leaving it open to any of the proper objects of a religious society, a pastor's house, a parish school, a parish library, free religious lectures, and perhaps a burial ground for the parish.

Beatty vs. Hurtz, 2 Pet. 584.

It was not for the benefit of the contributors alone, but of all who might compose the congregation in all time. The worship and religious teaching in the voluntary religious societies of Massachusetts have always been public and open to all persons conducting themselves properly; the administration of the ordinances to all persons duly qualified; and this society is no exception. Although the pew system prevails, the service is still public, and places are usually reserved for the poor and strangers. But even if the doors were closed to all but pew-holders, and those whom they chose to admit, the trust would still be a charity, by reason of the great number of persons attending, and of the facts that the society owned the pews, and in case of a new building, would own them all again, and might, at any time, alter or abandon the pew system, and that the right to secure pews was open to all.

## V. *Interpretation of the Contract.*

The indentures, therefore, having created a trust, and such a trust as the law recognizes as a charity, comes the question of what is the proper interpretation to be given to it.

Independently of the clause, "according to the tenure," etc., the deed and award would still be construed by the established rules of interpreting religious charities, as limiting the trust to the benefit of a Presbyterian Society. The society, by the subscriptions of whose members the land was bought and the house built, had been for several years before the establishment of the trust, and continued, confessedly, to be, for forty years after, in strict Presbyterian connection, which implies the faith and discipline alleged in the bill; indeed, the object of the connection is to ensure the perpetual adherence to that system of faith and discipline. The parties to the award, and grantees in the deed, are described as a committee to represent that society; and the habendum is to them and their successors in that trust and office forever, and to the use of the said congregation forever, and for no other use whatever.

These points would of themselves create a limitiation of the use.

Att'y Gen'l vs. Pearson, 3 Mer., 353; 7 Simons, 291.

Shore vs. Wilson, 9 Cl. & F., 351.

Att'y Gen'l vs. Drummond, 1 Con. & L., 210; 1 D. & W.

Craigdallie vs. Sikmar, 1 Dow. 1; 2 Bligh, 529.
Milligan vs. Mitchel, 1 M. & Cr., 72.
Leslie vs. Birnie, 2 Russ., 114.
Att'y Gen'l vs. Murdock, 7 Hare, 445 on appeal; 12 Eng., Law & Eq. R., 83.
Miller vs. Gable, 2 Denio, 492; Gardiner, Prest., 540.
Ibid. 10 Paige, 627.
St. Mary's Ch., 7 S. & R., 517.
Kniskern vs. Lutheran Church, 1 Sandf. Ch., 439.
Earle vs. Wood, 8 Cush., 430.
Curd vs. Wallace, 7 Dana, 190.
People vs. Steele, 2 Barb., 397; Edmonds, J., 405.

But with the aid of the clause above quoted, there can be no doubt as to the point at issue.

It is properly conceded that the clause designates a use, and that that use is the worshipping of God and the maintaining of a church government, according to the forms of a Presbyterian Church. The only dispute is, whether the worship and form of government are intended to be of perpetual obligation. The relators contend that they are:

1. Because there could be no object in declaring a use which might be altered the next day.

2. Because such a course would be contrary to the genius and history of the Presbyterian Church.

3. Because the deed uses the strongest terms, and in the closest connection, to indicate perpetuity.

In many of the cases cited terms of perpetuity were not used at all, and in none of them were they stronger than in this instrument.

If the clause refers to the strict technical tenure of the title, it refers not only to the "*tenure*" by which they "hold," but also to the "manner" in which they "enjoy" the lands; which last consideration is sufficient to limit the use.

But the clause does not even include the technical title; for the technical title in Scotland at that time was in no one; and that tenure could not be imitated here; nor did the deed attempt to follow it, but vested the title in trustees.

The clause was first prescribed in the award, and copied in the indentures. pp. 69, 34.

The referees were not lawyers, and did not attempt to indicate the technical title; on the contrary, they ordered the deed to be made to the congregation. But it was in part made to the trustees. The clause, then, when used in the award, did not indicate the technical title, and was not so treated by the parties to the indenture.

No such tenure of legal title to church lands was known in Scotland at that time.

The object of the clause in question was to refer to the Church of Scotland as a rule and model of the *terms of enjoyment* by the congregation; these terms were well settled in Scotland, and well known to all Presbyterians; neither the congregation, the pew-holders, the communicants, the heritors, nor all together, could vary the use; if it was perverted, it was vindicated by the church judicatory of the bounds.

(Mr. More, p. 86, cross int. 2.)

VI. *Perversion of the Trust by Private Legislative Act of Massachusetts.*

The Answer contends that the indenture and the statute of 1805 vest the title in the pew-holders.

It is not material whether the trust was perverted by those lawfully representing the *cestuis que trust* at that time or not; for if there was a permanent designation of the use, the beneficiaries of that day could not alter it; if there was not, the relators cannot prevail whoever altered it.

There is no evidence that the pew-holders had the right of voting in this society; and it is not probable that, contrary to Presbyterian usage, they had the right.

In a case like this, the majority had no power to alter the trust.

Craigdallie vs. Aikman, 1 Dow, 1; 2 Bligh. 529.
Milligan vs. Mitchell, 1 Myl. & C. 72.
People vs. Steele, 2 Barb. 397.
Field vs. Field, 9 Wend. 394.
Miller vs. Gable, 2 Denio, 525.
Presb. of Fordyer vs. Sharks, 11 Ct. of Les. Cas. (Dunlop) 1361.

Parties who have come into possession either lawfully or unlawfully, with knowledge of the trust, (which has always been matter of record,) cannot set up a title in contravention of the trust.

Attor'y Gen. vs. Munroe, 2 De G. & Sm. 163.

If these principles and facts are established, the charity is now perverted.

Princeton vs. Adams, 10 Cush. 129.

The Court has the fullest power over charities, and has adopted the most liberal rules of the English Chancery Courts.

There is no technical obstacle to the bill and information.

The relators are the proper parties to vindicate the use of the property.

Mr. More's dep. 85, int. 4, 6, 8.
Mr. Cook's dep. 88, 89, int. 4, 10.
Dr. Forsyth, 99, and cases cited.
Dr. McJimpsey's test. 122, ints. 15, 16, pp. 120, 121; p. ints. 1–8; ints. 1–3.
Articles of the Synod, 127, 128.
Dr. Forsyth, 97, 98, 99, 104, 106, 109.
Dr. McGill, 114, ints. 12–16.

And finally, it is no objection to the execution of this charity that it has been diverted since 1815, or even since 1786. The statute of limitation does not apply to the case.

Attor'y Gen. vs. Christ's Hosp. 3 M & K. 334.
2 Story Eq. Juris. § 1192, *a*.
Shelford on Charities, 156—7.
Inc. Soc. vs. Richards, 2 Dr. & War. 258.
Attor'y Gen. vs. Coventry, 3 Madd. 368—9.
Attor'y Gen. vs. Mayor of Bristol, 2 Jac. & W. 321.

Stat. 7 and 8 Vict. (Dissenters Chapel Bill) settles the law in England, that the Act 3 and 4, Wm. IV., does not extend to charities. See Attor'y Gen. vs. Hutton, 7 Irish Eq. Rep., for this act.

The Answer concedes that the respondents are a Unitarian Congregational Society, (Answer, 55, 57, 58, 72;) that the doctrines preached in the meeting-house are those of Unitarianism, and that their discipline is congregational. (Answer, 65, 57, 58, 72.) And it concedes that they do not conform in faith or discipline to the faith or discipline of the Kirk of Scotland. (Answer, pp. 46, 58, 72.)

The Answer concedes that the Church of Scotland in 1735 was Presbyterian and not Congregational, (Answer, 46;) and that it held to the Trinitarian Calvinistic faith, as set forth in the Westminster Confession of Faith and the Westminster Catechisms, and was in no respect Unitarian.

(See Books put in as evidence.)

The Answer concedes that the doctrines of the Church of Scotland are inconsistent with Unitarianism. (p. 48.)

And as matter of law, it is settled that the difference between the Trinitarian and the Unitarian theology, being deemed fundamental, must be so treated by the courts, and that funds given to support the teachings of one, are misemployed and perverted when applied to support the teachings of the other.

Princeton vs. Adams, 10 Cush., p. 120.

If, then, the property in question is a trust, to be applied to support the faith, worship, and discipline of the Church of Scotland, it is a perversion and an impairing of the obligation of the original contract, by which the property was held, to apply it as it is now applied by the respondents.

Whether the property in question is or not a trust by contract, depends upon the construction to be given to the indentures and award set forth in the pleadings, with especial reference to the following clause, which occurs in both, to wit: "According to the tenures and after the same manner as the Church of Scotland hold and enjoy the lands whereon their meeting-houses are erected."

(Award, p. 64; Indentures, p. 39.)

In the determination of a question of construction of such a nature as that above suggested, it is proper to consider who were the parties that used the words, what were the circumstances under which they were used, the meaning attached to them at the time generally, or, if they were of a peculiar character, by the class of persons to whom the parties belonged, or in the locality in which they resided.

Ld. Chanc. Sugden, in Ator. Gen. vs. Drummond, 1 Con. and Law, 210.

Shore vs. Wilson, (Lady Hewley's Charity,) 8 Cl. & F., 356; Ld. Lyndhurst's judgment, p. 389; Coleridge, J., p. 525; Gurney, B., Park, B., Tindal, C. J., p. 565; Ld. Cottenham, p. 579.

Milligan vs. Mitchell, 1 M. & Cr., 72.

Miller vs. Gable, 2 Denio, 492; Gardiner, Prest., p. 540, et seq.

People vs. Steele & Barb., 397, Edmonds, J.

Att'y Gen. vs. Murdock, 11 Eng. Law and 83; Ld. Cranworth, pp. 107, 109, 111.

The Society of Long Lane was in 1735, for seve had been, and for several years afterwards cont Presbyterian Society, holding to the standards of of discipline of the Church of Scotland. They wer pastor, Rev. John Moorhead, in regular Presbyte from 1729 to 1773, which fact alone is proof of thei doctrine. (Award, 63; Indentures, 37; Original Records, 130, 133.) Their subsequent Presbyte was through Mr. Annan, and with the Presbytery o of New England, and Presbytery of New York, 177 wer, 51; Dr. McJimpsey, 120; Ints. 9, 10, 11, 12 127, 128, 129, 130, 131, 132; Dr. Dana, 123.

Among the principles of the Church of Scotland all Presbyterians, is belief in a visible church, in

The relators are the proper parties to vindicate the use of the property.

Mr. More's dep. 85, int. 4, 6, 8.
Mr. Cook's dep. 88, 89, int. 4, 10.
Dr. Forsyth, 99, and cases cited.
Dr. McJimpsey's test. 122, ints. 15, 16, pp. 120, 121; p. ints. 1–8; ints. 1–3.
Articles of the Synod, 127, 128.
Dr. Forsyth, 97, 98, 99, 104, 106, 109.
Dr. McGill, 114, ints. 12–16.

And finally, it is no objection to the execution of this charity that it has been diverted since 1815, or even since 1786. The statute of limitation does not apply to the case.

Attor'y Gen. vs. Christ's Hosp. 3 M & K. 334.
2 Story Eq. Juris. § 1192, *a*.
Shelford on Charities, 156—7.
Inc. Soc. vs. Richards, 2 Dr. & War. 258.
Attor'y Gen. vs. Coventry, 3 Madd. 368—9.
Attor'y Gen. vs. Mayor of Bristol, 2 Jac. & W. 321.

Stat. 7 and 8 Vict. (Dissenters Chapel Bill) settles the law in England, that the Act 3 and 4, Wm. IV., does not extend to charities. See Attor'y Gen. vs. Hutton, 7 Irish Eq. Rep., for this act.

The Answer concedes that the respondents are a Unitarian Congregational Society, (Answer, 55, 57, 58, 72;) that the doctrines preached in the meeting-house are those of Unitarianism, and that their discipline is congregational. (Answer, 65, 57, 58, 72.) And it concedes that they do not conform in faith or discipline to the faith or discipline of the Kirk of Scotland. (Answer, pp. 46, 58, 72.)

The Answer concedes that the Church of Scotland in 1735 was Presbyterian and not Congregational, (Answer, 46;) and that it held to the Trinitarian Calvinistic faith, as set forth in the Westminster Confession of Faith and the Westminster Catechisms, and was in no respect Unitarian.

(See Books put in as evidence.)

The Answer concedes that the doctrines of the Church of Scotland are inconsistent with Unitarianism. (p. 48.)

And as matter of law, it is settled that the difference between the Trinitarian and the Unitarian theology, being deemed fundamental, must be so treated by the courts, and that funds given to support the teachings of one, are misemployed and perverted when applied to support the teachings of the other.

Princeton vs. Adams, 10 Cush., p. 120.

If, then, the property in question is a trust, to be applied to support the faith, worship, and discipline of the Church of Scotland, it is a perversion and an impairing of the obligation of the original contract, by which the property was held, to apply it as it is now applied by the respondents.

Whether the property in question is or not a trust by contract, depends upon the construction to be given to the indentures and award set forth in the pleadings, with especial reference to the following clause, which occurs in both, to wit: "According to the tenures and after the same manner as the Church of Scotland hold and enjoy the lands whereon their meeting-houses are erected."

(Award, p. 64; Indentures, p. 39.)

In the determination of a question of construction of such a nature as that above suggested, it is proper to consider who were the parties that used the words, what were the circumstances under which they were used, the meaning attached to them at the time generally, or, if they were of a peculiar character, by the class of persons to whom the parties belonged, or in the locality in which they resided.

Ld. Chanc. Sugden, in Ator. Gen. vs. Drummond, 1 Con. and Law, 210.

Shore vs. Wilson, (Lady Hewley's Charity,) 8 Cl. & F., 356; Ld. Lyndhurst's judgment, p. 389; Coleridge, J., p. 525; Gurney, B., Park, B., Tindal, C. J., p. 565; Ld. Cottenham, p. 579.

Milligan vs. Mitchell, 1 M. & Cr., 72.

Miller vs. Gable, 2 Denio, 492; Gardiner, Prest., p. 540, et seq.

People vs. Steele & Barb., 397, Edmonds, J., 405.

Att'y Gen. vs. Murdock, 11 Eng. Law and Equity Rep., 83; Ld. Cranworth, pp. 107, 109, 111.

The Society of Long Lane was in 1735, for several years before had been, and for several years afterwards continued to be, a Presbyterian Society, holding to the standards of faith and modes of discipline of the Church of Scotland. They were through their pastor, Rev. John Moorhead, in regular Presbyterian connection from 1729 to 1773, which fact alone is proof of their discipline and doctrine. (Award, 63; Indentures, 37; Original Answer, 44, 51; Records, 130, 133.) Their subsequent Presbyterian connection was through Mr. Annan, and with the Presbytery of Boston, Synod of New England, and Presbytery of New York, 1773—1786. (Answer, 51; Dr. McJimpsey, 120; Ints. 9, 10, 11, 12; Records, 126, 127, 128, 129, 130, 131, 132; Dr. Dana, 123.

Among the principles of the Church of Scotland, adhered to by all Presbyterians, is belief in a visible church, instituted by our

Saviour Jesus Christ, to continue to the end of the world, having authority over all Christians, the object of which is to preach to all men a definite revealed gospel, and to administer divinely established sacraments and ordinances for the salvation of men, and which derives none of its powers of discipline in matters spiritual from the State, and has a body of rulers, teachers and ministers appointed by the Saviour, with authority to transmit their powers and missions to others, to be by them selected and ordained, in a perpetual succession, and by their commissions in substantial parity. (See Hetherington's History of the Church of Scotland, *passim.*)

In the meeting-houses of the Church of Scotland, the technical title, the *jus proprietatis*, was in no person. The custody and administration of them was in the Presbytery of the bounds and the heritors; they were consecrated forever to the worship of God and the teaching of the Gospel according to the doctrine and discipline of the Church of Scotland; the congregation had no right of property, but only the enjoyment of the use; neither the congregation nor the trustees could divert them from this use.

More's Dep. 84, Int. 3, 5. Cross Int. 1, 2.
Cook's Dep. 87, Int. 3, 4, 10, p. 90. Cross Int. 1.

The pew-holding systems, in the form of allocation of sittings, has existed in Scotland; but the pew-holders, as such, have had no right to vote, or to alter the use.

Depositions of Messrs. More and Cook, and of Dr. Hill, as cited *supra*.
Dr. Forsyth, p. 97, 100, 101, 102, 103.
Dr. McGill, p. 117, Int. 34, 35, 36, 38.
The Pardovan Collection, p. 176, Part. 13, section 7 and 8.
Erskine's Principles, p. 117, 118, sec. 7 and 8.
Erskine's Principles, p. 117, 118, sec. 2, 3.
Bell's Principles, vol. 1, p. 425; vol. 2, p. 63; vol. 3, p. 155–6.

Not only was a belief in the Trinity considered essential in Scotland, but a denial of it was a capital offence down to 53 George III. In England, the Toleration Act of W. and M. excluded all who denied "the doctrine of the blessed Trinity," and made the denial thereof a penal offence, and so it continued until the act of 53 George III. (1813.)

In Massachusetts, from the original settlement until long after 1735, the deepest interest was taken in securing the teachings of Orthodoxy. The persecutions of the Quakers, Baptists, and others, were promoted, upon principle, by the most conscientious men.

In 1735, Unitarianism was unknown here, and it may be doubted whether it could legally have been preached. Until the adoption

of Article 11 of the Amendments of the Constitution in 1833, the support of religion was compulsory on all, and no option was allowed to the tax payers, except partially in 1799, (ch. 87, § 4,) and more liberally in 1811, (ch. 6.)

Keith vs. Howard, 24 Pick. 292.
Oakes vs. Hill, 10 Pick. 333.

The pew-holding system was established here, but never carried with it the right of voting in parish meetings.

Sts. 1786, ch. 10, § 1; 1817, ch. 184, § 1; 1823, ch. 106; § 1; 1834, ch. 183, § 1.

The rights of the pew-holders have always been of a very limited character; they are not absolute owners of the property.

Gay vs. Baker, 17 Mass. 435.
Daniel vs. Wood, 1 Pick. 102.
Kimball vs. Congr. Parish in Rowley, 24 Pick. 347.
Fassett vs. First Parish in Boylston, 19 Pic. 361.
Oakes vs. Hill, 10 Pick. 333.
Jackson vs. Rounsville, 5 Mt. 127.

In poll parishes and voluntary religious societies, the pew-holders do not necessarily possess the right of voting at all, and ordinarily not the exclusive right; but the act of voting depends upon the act of incorporation and the by-laws.

Taylor vs. Edson, 4 Cush. 522.

Upon the question of what is a perversion of a trust created by a trust deed in favor of a particular denomination of Christians, a recent decision of the Scottish court of sessions, Couper and others vs. Burr and others, is particularly pertinent to this case. The decision is reported in the Glasgow Morning Journal, of December 3, 1859.

There is another case adjudged in New York, but as yet only reported in the newspapers, which is also pertinent, both as admitting the general doctrine and as applying specially to the Presbyterian Church. It is the case of The People on the relation of George Gearn and al. vs. Daniel Farmington and al., supreme court of New York, Dutchess county, July 3, 1861, before Judge Emett, which determines which set of trustees of two dissentient members of the Presbyterian Church is the one entitled to the administration of a particular trust. See the Christian Instructor, Philadelphia, October 23, 1861.

## VII. *General Review of foregoing Points.*

1. There are three general questions:

1. Was the land put or appropriated by force of the deed of Little, to uses from which it is now diverted?
2. If so, have those uses become extinguished—either by the act of the congregation; or by lapse of time; or by the act of the legislature?
3. And if not so extinguished, can the Court decree their execution?

2. In regard to the first question, the propositions are:

That the habendum of the deed to Little means that the land is to be held and enjoyed *to the same uses and in the same manner*, to and in which the Church of Scotland then held and enjoyed the lands on which her meeting-houses were erected. That is: to be held and enjoyed for the advancement of religion, according to the then creed and polity of Scottish Presbyterianism: and if the particular congregation should renounce that creed and polity, and adopt another essentially different, it works a diversion and perversion of the use, which the appropriate judicatory, by proper proceedings, may correct, and one consequence of which is to determine the right of the particular congregation.

3. In regard to the second general question, the propositions are:

That the congregation and grantees under Little's deed could not, by majority or unanimity, extinguish or discharge the uses to which the deed puts the land, *because they derived all their rights and powers from a strict and clear deed of trust, which Little had the right to make, and which they accepted according to its form*, and which charges the land to and with those uses.

This proposition is entirely distinct from the proposition that *the uses are charitable*, which will be subsequently and separately examined.

And hereinunder,

*a.* The transaction of 1735 is not a vote of a congregation appropriating their own property for the present to a particular purpose, nor is it a grant of property to them generally, clothing them with absolute right over it. It is an act, whereby for the first time they acquired the property, and acquired it under and by a deed of trust, precisely and peremptorily defining and limiting the uses by which they were to take and hold, and of course the contingency on which they were to lose it.

*b.* The controversy, then, on this point turns wholly on the *interpretation of the deed of trust*, and unless that deed, as matter of intention, *meant to authorize the congregation to appropriate the land to other trusts* than those which it appoints, they cannot do it.

*c.* Of course the inquiry of others besides Little, and how many others contributed, is immaterial, since the deed and award conclusively prove that the deed of trust was rightfully executed, was the first origin in law of the title of the congregation, and the sole measure and limitation of their powers and duties.

*d.* But upon the evidence, Little only, and a few others—a number less than the congregation, and other than the congregation—made the contribution.

*e.* The deed, by just and necessary interpretation, intends to withhold from the congregation the right to divert from the trust declared.

*f.* If a majority of the congregation cannot so divert it, they cannot by unanimous action. This rests on three grounds:

Firstly. The nature of all such trust deeds.

Secondly. The congregation, at any particular time, is only a part of the true *cestui que trust*. The true *cestui que trust* is the series of congregations worshipping in all time—the series of persons who in all time may desire to worship there according to the terms of the trust. Or it is the advancement of religion through the creed and polity of Presbyterianism, which is the *cestui que trust*.

Thirdly. It rests on the evidence of the experts in regard to the powers of congregations under similar trusts and tenures.

And, fourthly. It is a necessary deduction from the nature of a *charitable use*.

This is such a use.

And if so, unanimity of congregation and lapse of time have no influence.

4. In regard to the third question, the proposition is, that if the charitable use subsists, and is perverted, the perversion will be perpetually enjoined; and, whether the relators are the proper parties or not, an execution of the use will be decreed. But they are the proper parties.

The act of the Legislature either does not intend to discharge the property of the charitable use; or if it did, would be simply void, as impairing the obligation of contracts under the Constitution of the United States.



Clarkson

# SUPREME COURT OF THE UNITED STATES.

No. 47.—December Term, 1861.

ATTORNEY GENERAL OF THE STATE OF MASSACHUSETTS, IN ERROR,

vs.

THE PROPRIETORS OF THE MEETING-HOUSE IN FEDERAL STREET, DEFENDANTS.

BRIEF FOR PLAINTIFFS IN ERROR.

## Part Second.

## CONSTITUTIONAL QUESTIONS.

### I. *Unconstitutionality of the Act of Massachusetts.*

1. The Relators conceive that the Act of the State of Massachusetts of June 15, 1805, in its relation to this case, is null and void in that part, which purports to transfer the seizin of the lands in dispute to the corporation created by that act, in this, that the act impairs the obligation of the trust contract, by which the premises were devoted to the religious uses of the Scottish Presbyterian Church.

Its first section purports to do two distinct things, viz:

*a.* To incorporate certain persons.

*b.* To declare the corporation to be "deemed in law to be seized" of the meeting-house, with the lands under and adjoining the same, with the privileges and appurtenances, including a dwelling-house erected on said lands, being the land, the trust use of which is a controversy between the relators and the respondents.

The Respondents, in their answer, set up title under this act. See the Trans., p. 34. Under that act, they say, "they are the true and sole owners of the premises occupied by them, and demanded in the bill."

2. The Relators do not deny that the Respondents are a lawful

corporation, and that so much of said act as incorporates them is or may be valid.

It is in this sense that in their Bill the Relators speak of the Respondents as a corporation "duly established by law." *Pro tanto*, the act may be valid, for aught the Relators know or care.

But an act may be valid in part and void in part, according to the things which it enacts. Such, as the Relators conceive, is the case of this act.

The Respondents' counsel suggests that one of the important features of the Bill is, that "it refers to the statute of 1805 but once," and then avers, in substance, "that it is valid."

That suggestion is erroneous in several respects.

First, the Relators had occasion to refer to this act "but once," namely, to ascertain the legal name and character of the Respondents—the parties having actual possession of the premises sought to be recovered—and who, as such, had to be made parties by any name and character which they might bear under the laws of the State.

No other cause or occasion existed to induce them to refer to this act.

No rule of pleading or of sense made it obligatory on the Relators to go behind the visible facts of the wrongful possession held by the Respondents, and to assume that they would undertake to set up title under some unconstitutional and null possession of that or any other act.

It would be time enough for the Relators to deal with such pretence of title when it should have been actually set up by the Respondents.

Meanwhile, in assuming that the Respondents were a corporation, in speaking of that corporation as having been "lawfully established by the laws of the Commonwealth," and even conceding that it was so established by that act, the Respondents did not concede, directly or indirectly, still less did they "aver," either in form or substance, the validity of that act any further than as it incorporated the Respondents.

The Relators now say, and say so unembarressed by erroneously imputed commitments to the contrary,—they now say that so much of that act as undertakes to dispose of the property in dispute, and to declare the Respondents seized thereof, is unconstitutional and void by reason of the provisions of the Constitution of the United States, which declares that "no State shall make any law impairing the obligation of contracts."

3. The question of the validity or invalidity of enactments of States, in their relation to this provision of the Constitution, has been before this court so many times, as to make the task of citation here one of classification and distinction in the first place, and

secondly, one of selection for special as well as general adaptation to the question here, between the Relators and Respondents. Most of these are cases of contracts, in the form of a legislative act of a State, general or special, the obligation of which is impaired by a later act of the State, general or special. Such are:

Fletcher vs. Peck, 6 Cranch, 87.
New Jersey vs. Wilson, 7 Cranch, 164.
Jackson vs. Lamphere, 3 Peters, 280.
Providence Bank vs. Billings, 4 Peters, 514.
Charles River Bridge vs. Warren Bridge, 11 Peters, 490.
Gordon vs. Appeal Tax Court, 3 Howard, 183.
Maryland vs. Baltimore & Ohio Railroad Co., 3 Howard, 576.
West River Bridge Co. vs. Dix, 6 Howard, 507.
Bronson vs. Kenzie, 1 Howard, 111.
Planter's Bank vs. Sharp, 6 Howard, 301.
Phalen vs. Virginia, 8 Howard, 163.
Woodruff vs. Trapnall, 10 Howard, 190.
Poup vs. Drew, 10 Howard, 218.
Baltimore & Susquehanna Railroad Co. vs. Nesbit, 10 Howard, 395.
Butler vs. Pennsylvania, 10 Howard, 402.
East Hartford vs. Hartford Bridge Co., 10 Howard, 511.
League vs. De Young, 11 Howard, 105.
Pennsylvania vs. Wheeling & Belmont Bridge Co., 13 Howard, 518.
State Bank of Ohio vs. Knoop, 16 Howard, 369.
Ohio Life Ins. Co. vs. Debolt, 16 Howard, 416.
Christ Church vs. County of Philadelphia, 20 Howard, 28.

There is another class of these cases, in which question is, whether contract between private persons or corporations has its obligations impaired by the legislative act of State. Such are the cases of—

Terrett vs. Taylor, 9 Cranch, 43.
Clark's Ex'or vs. Van Reinsdyk, 9 Cranch, 133.
Sturges vs. Commonwealth, 4 Wheaton, 122.
Farmers & Mechanics' Bank vs. Smith, 6 Wheaton, 131.
Ogden vs. Saunders, 12 Wheaton, 213.
Mumma vs. Potomac Co., 8 Peters, 181.
Beers vs. Haughton, 9 Peters, 329.
Gantley's Lessee vs. Ewing, 3 Howard, 707.
Cook vs. Moffat, 5 Howard, 295.
Crawford vs. Bank of Mobile, 7 Howard, 279.
Curran vs Arkansas, 15 Howard, 304.

To the latter class—that is, of private contracts affected by a legislative act of a State—belongs the demand of the Relators.

4. Some leading cases on this point are to be found in the adjudication of the States. Such are:

Trustees New Gloucester School Fund vs. Bradbury, 2 Fairfield, 118.
Norris vs Abington Academy, 7 Gill & Johnson, 14.
University of Maryland, 9 Gill & Johnson, 365.
Louisville vs. The University, 15 B. Munroe, 642.
Commonwealth vs. Callen, 1 Harris, 133.
Brown vs. Hammel, 6 Barr, 86.
Poultney vs. Wells, 1 Aiken, 180.
Montpelier vs. East Montpelier, 27 Vermont R. 710.
Associate Reformed Church vs. Trustees of Theolog. Sem., 3 Green's N. J., Ch. R. 79.

5. Among the decisions of this court are several precisely to the point, and full of analogies pertinent to the present case. Such are—

*a.* Terrett vs. Taylor, 9 Cranch, 43, which determines that certain legislative Acts of the State of Virginia, in so far as they go to devest the Episcopal Church of property acquired previous to the Revolution by purchase or donation, are in conflict with the Constitution of the United States.

*b.* Dartmouth College vs. Woodward, 4 Wheaton, 518, which maintains the Trustees of Dartmouth College in the trusts comprehended by their anti-revolutionary charter, and protects the property in their hands against diversion by the State of New Hampshire.

*c.* Society for the Propagation of the Gospel vs. New Haven, 8 Wheaton, 464, which declares null a certain legislative Act of the State of Vermont, diverting certain lands to other trustees in place of the original trustees, the Society for Propagating the Gospel in foreign Parts.

6. The adjudications of the courts of States above cited are also, in like manner, specially pertinent, being selected on that account from the general class of such cases in the States.

7. The same point incidentally appears in various arguments and citations in the first part of the Brief for the Relators.

Moreover, all which is there said of the trust, of its nature, of its perversion by the Respondents, is directly pertinent to the present branch of inquiry.

8. At this stage of the discussion, then, the Relators would stop and confidently ask of the court a decision in their favor, but that the Respondents object insufficiency of the record of the supreme court of Massachusetts in the case, to enable the court to see that

the constitutional question is involved, and so to revise the decision of the supreme court of Massachusetts in favor of the validity of the act of the State.

This question was made by the Respondents immediately after the entry of the writ of error, but suspension of consideration of the point was made by the court, in order first to hear the merits.

The Respondents now renew this question of the competency of the record.

## II. *Competency of the Record.*

The writ of error in this case appears on its face to have been brought to the supreme court of Massachusetts under the 25th section of the judiciary act of 1789, ch. 20, which confers appellate jurisdiction in this court from final judgments and decrees in the highest courts of law or equity of a State in which a decision in the suit could be had in the case,—in the case, among others, where the validity of a statute of the State is questioned, on the ground of its being repugnant to the Constitution of the United States, and the decision being in favor of its validity.

The Relators contend that the act of the State of Massachusetts, entitled "An act declaring and confirming the incorporation of The Proprietors of the Meeting-house in Federal street, in the Town of Boston," is repugnant to the Constitution of the United States, because contrary to that clause of the Constitution which forbids any State of the Union to pass a law impairing the obligation of contracts, and that so the court has jurisdiction of the case under the act of Congress.

Assuming, in virtue of the arguments hereinbefore adduced, that to be so, then it is requisite, in order to maintain the jurisdiction of the court here, to show—

*a.* That there was a final judgment or decree in the supreme court of Massachusetts.

*b.* That the validity of the statute of Massachusetts was drawn in question.

*c.* That the supreme court of Massachusetts decided in favor of its validity.

*d.* That all this duly appear in the record brought up by the writ of error.

The Respondents do not deny the fact alleged of a final judgment or decree in the case by the supreme court of Massachusetts.

Nor can they deny that, if the validity of the act were in issue, the decision was in favor thereof.

But the Respondents say:

*a.* That it does not appear by the record that the validity of the act was drawn in controversy in any manner or upon any grounds whatever.

*b.* That if it do sufficiently appear that the validity of the act were drawn in controversy, then it does not appear that the decision of the court in its favor was upon any ground giving jurisdiction to this court, but, on the contrary, that it was on some ground, if any, appertaining to the exclusive jurisdiction of the State.

1. Before discussing these questions, it is convenient, preliminarily, to consider how it must appear that pertinent and material question was made and decided by the court of a State.

The rule on this subject was carefully considered by the court in the case of Crowell vs. Randell, 10 Peters, 369, and seems to be this:

If the record show that the questions shall have been made in specific and positive terms, and so decided, that, of course, suffices to satisfy the requirements of the act of Congress.

But *it is not indispensable* that it should appear on the record *in totidem valis,* or by direct and positive statement, that the question was made, and the decision given by the court below, on the very point: it is sufficient, if it be clear from the facts stated, by just and necessary inference, that the question was made, and that thus the court below must, in order to have arrived at the judgment pronounced by it, have come to the very decision of that question as indispensable to that judgment.

Of the many cases anterior to that of Crowell vs. Randell, in which the point had been examined or touched, it is unnecessary to cite or comment on any, because they are, one after another in succession, carefully scrutinized and analyzed by the court in that case, which is the considered result of such analysis and scrutiny.

The next important case is that of Armstrong vs. The Treasurer of Athens County, 16 Peters, 281, in which the court proceeds to state analytically the various methods in which the requisite matter must appear, still recognizing the doctrine that it may appear by implication or intendment, as laid down in the case of Crowell vs. Randell.

The case of Mills vs. Brown, 16 Peters, cited in defendants' brief, determines nothing to the contrary to this; but, on the contrary, confirms it, as follows:

"These points are not directly stated in the pleadings, nor are they noticed in the decree of the circuit or supreme court of the State. Yet, if it appear from the bill that the court could not have sustained the demurrer without considering and deciding these points—if they were necessarily involved in the decision of the case as presented by the bill and demurrer—this court would have jurisdiction upon the writ of error, although they are not expressly stated in the decrees to have been raised and decided." p. 527.

So it would have to be said if the same things appeared in the Bill or Answer.

In each of the several subsequent cases, in which this point was before the court, either directly or indirectly, the same doctrine is announced. Such are—

Commercial Bank of Cincinnati vs. Buckingham's Executors, 5 Howard, 317, 341.
Smith vs. Hunter, 7 Howard, 738.
Neilson vs. Logan, 12 Howard, 98.
Williams vs. Oliver, 12 Howard, 111.
Grand Gulf Railroad vs. Marshall, 12 Howard, 165.
Lawler vs. Walker, 16 Howard, 149.
Maxwell vs. Newbold, 18 Howard, 511.
Christ Church vs. Philadelphia, 20 Howard, 26.

Indeed, the counsel of Respondents, in citing these cases, admits the doctrine of intendment, as affording one of the sufficient means of ascertaining the fundamental fact, on which the jurisdiction of the court is based, in this class of cases of error to the highest courts of a State.

Without selecting, among these decisions, but taking one of them at hazard, for a statement of the doctrine, note the language of the Chief Justice in the case of Neilson vs. Logan, as follows:

"It has never been held that the record of the proceedings of the highest court must state in terms a misconstruction by that court of the act of Congress. It is enough that it is an inference of law, from the inspection of the whole record, that the highest court did thus misconstrue an act of Congress, and annul a title, or right or title, otherwise valid, by reason of such misconstruction." p. 109.

Of course, the doctrine of intendment or inference must be the same, whether, as alleged basis of jurisdiction here, the question be of a right acquired under act of Congress being annulled by the decision of the court of a State, or of the decision of that court maintaining the validity of a statute of the State which impairs the obligation of contracts, and so infringes the Constitution of the United States.

Finally, come two cases determined at the last term of this court, namely, Medberry vs. The State of Ohio, 24 Howard, 413, and Porter vs. Foley, ibid., 415.

Now, in the first of these cases, the court again expressly recognises the doctrine of intendment, in the following words:

"For the purposes of this case, it is only necessary to say, that it must appear from the record of the case, either in express terms, *or by clear and necessary intendment*, that one of the questions which this court has jurisdiction to re-examine and decide was actually decided by the State court." p. 414.

And in the next case before the court, while there was no occasion to enter into this particular question, and it was not entered into, of course nothing was said contradictory to what had been laid down at the same term, and in fact announced on the same day, and by the organ of the same learned member of the court, in the case of Medberry vs. The State of Ohio.

Respondents' counsel quotes a phrase from the opinion of the court in the case of Michigan Railroad Company vs. Michigan Southern Railroad Company, 19 Howard, 378, 379, which seems to confine the doctrine to "direct averment." But the previous sentence shows that the court did not intend to exclude "necessary intendments;" which alternative may have been dropped from the second of the two sentences by clerical error, or may have been deemed to be sufficiently stated in the preceding sentence, and so not to need repetition immediately in the second sentence.

Nothing to the contrary of this can be deduced from the case of Collins vs. Stamburgh, cited by defendants' counsel from 7th Howard, 14, where this court had jurisdiction and pronounced judgment on the merits, or in the case of Erwin vs Lowry, 7th Howard, 172; both of which cases were of questions of conflict between the State court of Louisiana and the circuit court of the United States.

Meanwhile, it is in cases from Louisiana, and those only, that this court looks into the opinion of the highest court of the State, in order to see whether it had accorded validity to an act of the State impairing the obligation of contracts.

Almonester vs. Kuston, 9 Howard, 1–9.
Cousin vs. Blanc's Ex'or, 19 Howard, 202, 207.

Such, then, is the rule of the court—express averment or necessary intendment.

It remains to show, that although the point be not expressly averred in this record, yet it was necessarily intended on the face of the Bill, Answer, and Decree.

2. The act of Massachusetts was directly and expressly in issue.

*a.* The bill of the Relators alleges a trust contract, establishing a charity for specific religious uses.

It alleges the perversion or abuse of that trust by the Church or society existing in the persons of the Respondents or their predecessors.

It prays that the trust be re-established.

It prays that the Respondents may be removed from the administration of the trust, and other trustees appointed.

In sum, it denies the right of Respondents to be in possession of the property and the muniments of its title, and demands an account of the rents of a part of the premises.

*b.* To all this the Respondents, while making certain answers to other matters of the Bill, commence their defence by saying—

That "under the said act they are the true and sole owners of the premises occupied by them and demanded in the bill."

And that, "by virtue thereof, these defendants have ever since been in open, exclusive, and undisputed possession of the said premises, and have exercised all the acts and rights of ownership thereto." Tr., p. 34.

They do not show any other right to the possession of the property as against the Relators, except claim of title by such possession, protected, as they allege, by the limitation acts of the Commonwealth.

*c.* That act does two things, namely:

First, incorporates "the proprietors of the pews in the Congregational meeting-house, situated in Federal street."

Secondly, it declares that the "said corporation shall be and hereby are deemed in law to be seized of the same meeting-house, with all the lands under and adjoining the same, with the privileges and the appurtenances."

*d.* And the Relators reply, that they will prove their Bill to be true and sufficient in law, and to join issue with the Defendants.

3. The question of the constitutionality of the act was in issue.

*a.* The adverse title set up by the Respondents is one of "ownership" in fee, under alternative sources of one of two titles, namely:

Either the direct force of the legislative act of the State;

Or by force of prescription under possession conferred by that act.

In fact, of each alternative pretence of title, the act is the alleged foundation.

To escape the possible consequences of relying on the direct force of the act as the sole source of title, the Respondents resort to prescription.

But the Relators say that a title by direct force of the act would be a nullity, as already argued, because, in that view of the subject, the act would be a nullity by the Constitution of the United States, as impairing the obligation of the contract, by which the lands were dedicated to the public charity and religious use of the Presbyterian Church.

*b.* Assuming that to have been proved, then, as to the grounds of prescription, the question is this: If the Legislature of a State pass an act impairing the obligation of a contract, and which act, if the case were before it, the Supreme Court of the United States would for that reason pronounce to be void in that respect,—can this consequence be evaded or avoided by setting up prescription?

No; for if it could, then it is in the power of any State to nullify completely this conservative provision of the Constitution, by

enacting a law avowedly impairing the obligation, and enacting, at the same time, a brief, summary, and peremptory prescription.

It is respectfully submitted that this court cannot and will not be thus deprived of its jurisdiction in such a matter.

*c.* Suppose, for instance, that the court should do what it has repeatedly decided in such cases it will not do, and should follow the suggestion of the Respondents' counsel, (Brief, p. 6,) and look into the opinion of the supreme court of Massachusetts to see how that court arrives at the decision to take away the premises from the Presbyterian Church, and, in violation of the contract uses of the religious foundation, transfer the property to the Unitarian Church, and should find that that court, conscious of the unconstitutionality of the act as impairing contracts, yet maintains the act indirectly by calling in prescription to effect the object, and thus nullifies the Constitution of the United States by indirection,—could the Relators be lawfully deprived in this way of their rights under that Constitution?

No: A State cannot by any of its constituted authorities, legislative or judicial, thus oust the jurisdiction of this court, and so nullify the Constitution.

*d.* But, in a previous part of this Brief, the Relators have shown that prescription is no answer in law to the claim of the Bill.

Of course, if (which it cannot do) this court were to look into the opinion of the supreme court of Massachusetts in the expectation of finding "prescription," as the ground of decision below, we are bound to presume that no such thing would be found there; but that, on the contrary, the supreme court of Massachusetts looked the difficulties of the subject square in the face, and affirmed the validity of the act as the only possible source of the pretended title of the Respondents.

3. Hence it follows, that the Supreme Court of Massachusetts decided in favor of the validity of the act, notwithstanding it impairs the obligation of contracts.

We have seen, in the proper place, that in so far as the adjudged acts professes to give seizin to the defendants, it does impair the obligation of a contract.

We have seen, that the force of the act is directly and expressly put in issue by the Bill, Answer, and Replication, as being the only pretended source of the Respondents' title, whether directly or as the color of prescription.

And, therefore, it must be intended, of necessity, that the supreme court of Massachusetts decided in favor of the act, notwithstanding it impaired the obligation of a contract, because thus only, upon the Bill and Answer, could that court decide against the Relator, and in favor of the Respondents.

4. On these premises, the Relators submit that sufficient matter appears in the record to satisfy all the conditions of law on the subject of jurisdiction.

That being the case, they further respectfully submit that they have demonstrated the creation of the trust in behalf of the Presbyterian Church, and its perversion by the Respondents, under color of the legislative act of Massachusetts, to the uses of the Unitarian Church.

Whereupon, they humbly pray of the court to do justice to the cause of equity and religion, and restore the property in controversy to the religious use for which it was put in trust, namely, the services and worship of the Scottish Presbyterian Church.

C. CUSHING,
*Of Counsel for Relators.*

# SUPREME COURT OF THE UNITED STATES.

ATTORNEY GENERAL, &c.,
vs.
PROPRIETORS OF MEETING HOUSE. } No. 47.

## DEFENDANTS' SUPPLEMENTAL BRIEF.

McGILL & WITHEROW, Printers.

# Supreme Court of the United States.

ATTORNEY GENERAL, &c.,
*vs.*
PROPRIETORS OF MEETING HOUSE. } No. 47.

*Defendants' Supplemental Brief.*

I.

The order of the Court reserving the motion made by defendants at December Term, 1859, "for argument when the case is argued on the merits in the regular call of the docket," is understood by defendants to import that the Court in disposing of the motion desire that a more full and minute discussion by counsel of the features of the record be had. Defendants do not understand that this order is designed to repeal or in any manner affect the settled rule of this Court, that although the record exhibits a case falling within its jurisdiction, yet it will examine and dispose of those questions. and those only, upon which the jurisdiction is founded, leaving untouched and unaffected all other questions raised in the record and decided by the State Court.

In this faith, defendants have again printed and filed their brief on the motion to dismiss. If, unhappily, they shall be in error in this view, and if it be true that this Court, having jurisdiction over a cause upon one of the points decided by a State Court, will proceed to review all the other points decided by such Court, then defendants will rely upon their printed brief on those other points, which constitute the real merits of the cause, which accompanies their brief on the motion to dismiss, and upon the careful and able judgment of the State Court as reported in 3d Gray's Reports, p. 1—merely asking the attention of the Court to the fact that all the substantial grounds on which that judgment is founded, rest on questions of local law.

## II.

Defendants proceed then to state with greater fulness the grounds on which their motion to dismiss rests, and to reply to the views submitted in the brief of the relators.

There can be no controversy as to the doctrine of this Court upon the point of what must appear by the record to sustain its jurisdiction—and defendants will merely refer to the cases cited in their former brief—and will submit, that neither on its face, nor by necessary intendment, nor by the remotest inference, does it appear that the question of the validity of the statute in question lay in the path of the decision of the State Court, so that the judgment *must* have drawn its validity, or even its construction, into question.

Does, then, in the first place, the record on its face, or by necessary intendment show (as the writ of error avers) that the validity of the statute of June 15, 1805, was drawn in question at all; and even if it did, does it also show that its validity, on the ground that it was repugnant to the Constitution of the United States, was thus drawn in question; and finally, does it show, by implication even, that in disposing of the case the question of its validity, as affected by the Constitution, was in any manner decided by the Court.

1st. As to the question whether the validity of the act is drawn in question at all.

*a.* In the bill the act is referred to twice only, viz: (Record, p. 19,) where it avers that the defendant "society is now a corporation duly established by the law of the Commonwealth under an act of incorporation passed about 1805," and again, in the 107th interrogatory, (Record, p. 32,) when it asks, "whether the said church and society is not now a corporation *duly* established by the laws of this Commonwealth, as is stated in this bill." The pleader, therefore, with full knowledge of the act and its influence, if any, upon the case to be tried, not only does not draw its validity in question on any ground, but asserts it to have duly effected its objects.

The reason of this will be obvious, when the Court come to inspect the act, and find that it is an enabling or confirmatory act merely, under which no title not already existing in the parties incorporated was attempted to be vested, but they were merely clothed with corporate powers. (See opinion of Shaw, C. J., 1 Gray, p. 60.)

*b.* Thus far in regard to the original bill. The answer is next to be examined, and it will be found that the act is twice only referred to, viz: Record, p. 34. There the defendants say "that they were made

into a corporation by an act of the Legislature of Massachusetts, passed on the 15th day of June, 1805, and that under said act they are the true and sole owners of the premises occupied by them and demanded in the bill, and that this said act was passed upon the application and petition of parties who prior thereto, as owners of pews, were tenants in common of the land and house thereon, and said charter was accepted, and by virtue thereof they have ever since been in open, exclusive, and undisputed possession, and they therefore rely on this possession, and set up the statute of limitations."

The only other part of the answer which refers to the act is a recital of the election of officers in 1851, under the act, (Record, p. 50,) who are thus authorized to sign the answer?

*c.* After this answer the bill was amended, (Record, p. 54;) and defendants filed an answer to the amended bill. (Record, p. 57.) In the amended bill no allegation is contained that the act thus set up in the answer is invalid for any reason, nor any issue made in regard to it. Indeed the act is not referred to at all, nor is it referred to in the answer to the amended bill.

It thus appears from the pleadings that in form at least the validity of the statute was not only not thereby drawn in question, on the ground that it was repugnant to the Constitution of the United States, but no averment as to its validity or invalidity on any ground was put in issue on the record. It remains to find if, by necessary intendment or reasonable intendment, or, as defendants submit, even by conjecture, (if that were allowable,) the whole record shows, that in arriving at the judgment or decree, the State court must necessarily have passed on the question whether the statute was unconstitutional, and have affirmed that it was not; and further, whether, but for such decision, no decree could have been entered for defendants.

2d. But the counsel for relators insists that the bill sets up a trust for a public charity; alleges its perversion by defendants; prays that defendants be removed from its administration; denies the right of defendants to be in possession, and demands an account. He further avers, that "to all this, defendants, while making certain answers to other matters of the bill, commence their defence (in the words and manner quoted above in this brief;) and as defendants do not show any other right to the possession of the property as against the relators, except claim of title by such possession, protected by the limitation acts;" and as the statute in fact (for whatever purposes it may be set up by the answer) declares that the corporation "shall be and are hereby deemed in law seized" of the land, and as plaintiffs have

filed the general replication, the question of the constitutionality of the statute is thereby drawn in question. To which defendants reply:

(*a.*) That this proposition seems to them a very remarkable view of the rules of pleading. It assumes not merely that the construction and effect of the statute was thus put in issue, but that it was so put in issue upon the ground that it was repugnant to the Constitution of the United States.

(*b.*) But there is another difficulty in the proposition, viz., that its elements of fact are, in defendant's view, unsupported. It is, as they think, quite incorrect to say that "defendant, while making certain answer to other matters of the bill, commence their defence" by relying on the statute as the source of their title. On the contrary, the record shows that no "certain answer" is made to any other part of the bill except to the allegations of title set up therein—that the only matter set up in avoidance is the statute of limitations, and that the statute in question, instead of being relied on as a source of title, is simply used as fixing a date from which the title of defendants, in the form of a corporation, (as distinct from their ownership as tenants in common,) begun; and this for the purpose of setting up the statute of limitation, which forms the concluding part of the clause in which the statute is referred to.

(*c.*) It is still more incorrect to say that defendants do not show (by the answer) any other right "except claim of title by such possession, protected, as they allege, by the limitation acts, or as it is elsewhere stated, "by direct force of the statute or by presumption." The answer distinctly alleges that the title was originally conveyed in trust for the pew-holders, by whose money it was purchased; that by unanimous consent of trustees, &c., *cestui que trusts*, the uses were changed in 1786, (Record, pp. 36, 37, 58, 59, 45, 60,) and that as pew-owners prior to the statute in question, they were tenants in common of the land. (Record, p. 34.) Indeed, the statute in question, as construed by the State court, as has already been shown, purported to confirm and not to vest title.

3d. The counsel for relators, finally, enters upon a course of argument, which, assuming that the statute is the real source of defendant's title, proceeds to assert that if this be so, and if the statute be void, we cannot legally avail ourselves of adverse possession. In our view, the point has no resting place, as it fails in its postulate. But if this were otherwise, it can hardly be sound law that adverse possession under defective title is of no avail, and that the law forces upon the tenant as his only reliance the colorable title which, at the same instant, it pronounces void.

## III.

A portion of the relator's brief is devoted to the question whether, assuming that a charitable trust has been shown to exist, that the proper parties are before the court to vindicate it, and assuming further that the question of the constitutionality of the act of 1805 was properly raised by the record, and is now before this Court, then must not the State court have erred in holding the act constitutional? Defendants submit that if this question is ever reached by the Court it, raises the question of the construction of a State law. Upon such question the Court will look out of the record, and refer to the reported judgment below, to find the ground of the decree. Now, upon reference to the printed report of this case, 3d Gray's Reports, page 1st, the Court will find that not only no question as to the constitutionality of the act was raised or decided, but that the act was construed and adjudged to be a mere confirmatory act, giving no new rights to the defendants, except to hold their existing rights in a corporate form.

## IV.

On the opening brief submitted, the point is made, (perhaps improperly connected with the motion to dismiss,) and cases cited to show that this Court will not reverse the decision of a State court where one of the points raised on the record was within its jurisdiction, if it was also apparent that there were other points within the exclusive jurisdiction of the State court, upon which the decree or judgment might well rest. This, perhaps, is but another mode of stating the fundamental doctrine that it must appear that the point complained of as erroneous was necessary to the decision of the cause; and defendants will simply call attention to the principles upon which the courts proceed when the record shows a point raised clearly within its jurisdiction, and when it is not clear from the record whether the State court decided upon grounds not within the jurisdiction of this Court, viz: they will proceed to see if the State court could have properly settled the cause on those grounds, (see Neilson vs. Logan, 12 Howard, 98, cited by plaintiff;) and in view to such inspection of the record, the defendants present the following statement of the principal points of defence made by the answer:

1st. That as a corporation they have, since 1805, and under the statute, had exclusive possession of the premises which were previously

owned by them as tenants in common—and avers that "even if their title were originally defective, it is cured by adverse possession."—Record, pp. 34, 35.

2d. That the deed relied on by the relators as creating a charity, was, in fact, a conveyance to trustees for the benefit of pew-owners, who bought and paid for the whole estate, and was in no manner a public charity. Record, pp. 36, 37, 58, 59.

3d. That this trust by unanimous consent of all the trustees, and *cestui que trusts*, was, in 1786, changed as to the form of faith and worship to which the use should be applied. Record, pp. 45, 60.

4th. That the tenure set up in the bill as that under which the alleged charitable use was created, could not exist by the laws of the State. Record, p. 38.

5th. The answer denies, or leaves the relators to prove, that upon their own theory of a charity they have any standing as connected with the trust. Record, pp. 43. 44, 45.

S. BARTLETT, *for Defts.*

Vide Supplementary

UNITED STATES OF AMERICA.

Supreme Court of the United States.

No. 47.

DECEMBER TERM, 1861.

# ATTORNEY GENERAL

OF THE STATE OF MASSACHUSESTTS,

IN ERROR,

*vs.*

# THE PROPRIETORS OF THE MEETINGHOUSE IN FEDERAL STREET.

POINTS AND AUTHORITIES FOR DEFENDANTS.

BOSTON:
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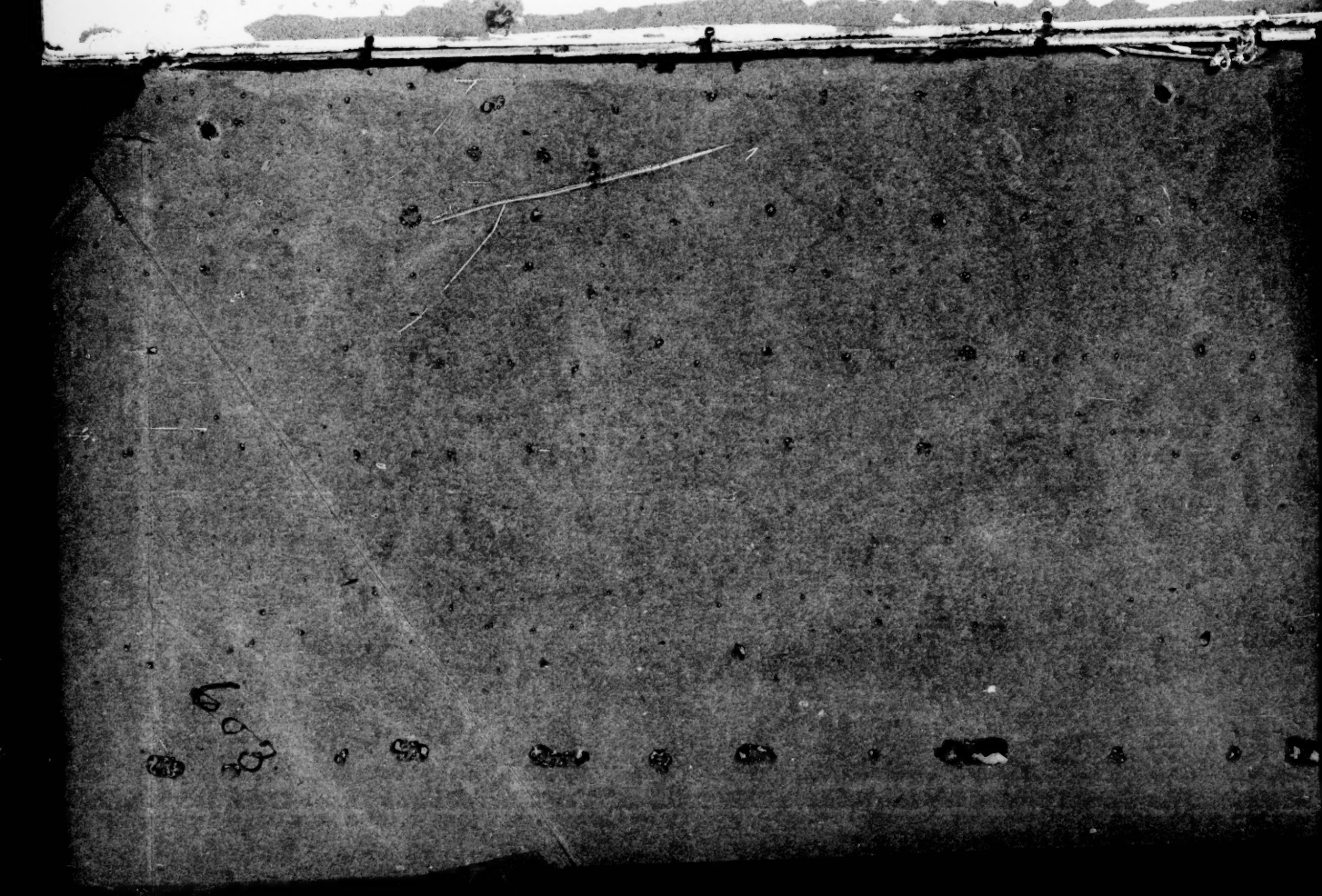
1861.



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# Supreme Court of the United States.

No. 47.

DECEMBER TERM, 1861.

**ATTORNEY-GENERAL OF THE STATE OF MASSACHUSETTS,**

IN ERROR,

*vs.*

**THE PROPRIETORS OF THE MEETINGHOUSE IN FEDERAL ST.**

DEFENDANTS.

And now the Defendants move the Court here that said Writ of Error be dismissed for want of jurisdiction in this Court to entertain the same.

1. Because said Writ of Error seeks to reverse the judgment therein referred to on the single ground that there was drawn in question, in the suit in which it was rendered, the validity of a statute of the State of Massachusetts (passed the 15th day of June, 1805, a copy of which is appended hereto), as being repugnant to the Constitution of the United States, and that the decision in said suit was in favor of the validity of said statute: whereas it does not appear by the record, or by necessary intendment therefrom, that the validity of said statute was drawn in controversy in any manner, or upon any grounds whatever.

2. Because if the above proposition of fact were not well founded, and the validity of said statute was drawn in question on

the grounds aforesaid, and the objection was overruled, yet it is clear from the record that the judgment sought to be reversed may be well supported upon various grounds within the exclusive cognizance of the State Court in which it was rendered; and so, upon settled principles, said judgment will not be reversed by this Court.

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## POINTS AND AUTHORITIES FOR DEFENDANTS, IN ERROR.

### I.

The doctrine of the Court on the first point is now too firmly established, on a careful review of all the cases, to be shaken; and that doctrine is, that to give this Court jurisdiction, it must appear by the record, or "by clear and necessary intendment, that the question [on which the jurisdiction is founded] *must* have been raised, and *must* have been decided, in order to have induced the judgment." (Crowell *vs.* Randall, 10 Peters' R., 368, 398.) "That the question was necessarily involved in the decision, and that the State Court *could not have given the judgment or decree which they passed without deciding it.*" (Armstrong *vs.* Treasurer, &c., 16 Peters' R., 281, 285. See also Mills *vs.* Brown, 16 Peters' R., 525.)

The cases above cited have been referred to, and their doctrine confirmed, in

Smith *vs.* Hunter, 7 Howard R. 738.
Neilson *vs.* Lagow, 12 Howard R. 98, 109.
Williams *vs.* Oliver, 12 Howard R. 111, 124.
Grand Gulf R.R. *vs.* Marshall, 12 Howard R. 165, 167.
Lawler *vs.* Walker, 14 Howard, 149, 155.
Maxwell *vs.* Newbold, 18 Howard, 511, 515.
Christ Church *vs.* Philadelphia, 20 Howard, 26, 28.

The latest application of the doctrine to a suite in Equity is Michigan Central R.R. *vs.* Michigan Southern R.R. (19 Howard, 379), where it is stated thus:

"If the subject of complaint be, that a State statute is repugnant to the Constitution of the United States, and therefore void, and that the State Court has declared it to be valid, this fact should appear by some direct averment, either on the bill or answer, or in the decree of the Court.

See also Medberry *vs.* Ohio, 24 Howard, 413.

In view of the principles thus established, it remains to examine the record in this case, and apply them; and Defendant submits:

1. That the bill and information is framed singly and solely on the assumed ground, that under and by virtue of a certain conveyance of land, with the meetinghouse thereon, made by John Little to Glen, Hall, Shaw, and Knox, on the 9th of June, 1735, a charity or trust was founded and created, under which said land and meetinghouse were forever devoted to the use of a Scotch Presbyterian Church, which charity, it alleges, has become perverted by the Defendants, an Unitarian Congregational Society, who hold and occupy the premises for public worship after their forms and faith, which the bill avers are repugnant to those of the Scotch Presbyterian Church, and so an abuse of the trust and charity. That this is the entire scope of the bill will be seen not only from a diligent perusal of its lengthened narrative and averments, but from its prayer, and from the parts of the bill which attempt to escape the operation of the Statute of Limitations, and the results in a Court of Equity of *laches*, by averments that charitable trusts are not within the Statute Limitations, and that the jurisdiction of the Court over charities has been but recently established in Massachusetts.

But the feature of the bill of most importance on this motion is, *that it refers to the Statute of* 1805 *but once, and there avers, in substance, that it is valid.* Thus in record, page 19, it avers the premises to be now occupied by the Defendant Society, "which said Society is now a corporation *duly established* by the laws of this Commonwealth, under an Act of Incorporation passed about the year 1805."

It will be noted that this averment was not amended, nor any allegation of the unconstitutionality of the Act of 1805 inserted after the coming in of the answer with its averments in regard to the said Act.

2. The answer is next to be examined; and its averments, so far as they relate to the Act of 1805, are,—that by it Defendants were incorporated, and that, "under it, they were the true and sole owners of the premises occupied by them and demanded in the bill; and that said Act was passed on the application and petition of parties "*who, prior thereto, as owners of pews, were tenants in common of the land and the house thereon.*" (Record, p. 34.) It then goes on to aver that the charter was accepted, and, by virtue thereof, these Defendants (as a corporation) have been ever since in open and exclusive possession for nearly fifty years; and on this ground they set up the Statute of Limitations as a bar to any alleged claim of complainants.

This, with the exception of a statement of the election of officers under it in 1851 (Record, p. 50), is the only reference made in the answer to the Act of 1805; and the allegation is in substance merely that, prior to the Act, the parties incorporated were tenants in common of the land, and that, under the Act, the Defendants, in their character as a corporation, became seized of the estate which its members thus owned before; and this whole allegation as to the Act of 1805 is merely preliminary and to fix a date at which the adverse possession of the corporation began, with a view to the plea of the Statute of Limitations, with which the averment is followed.

The other grounds of defence set up in the answer (which should also be noted, with a view to the second ground of Defendants' motion), are:

A denial that the deed of Little created or was intended to create any charitable use or trust. An allegation that the land and meetinghouse were purchased and built at the common expense of parties associated for public worship, of which Little was one; and the conveyance made thereof by Little (who had orignally pur-

chased it as agent of the parties) to Glen, Hall, and other pewholders, as trustees of a religious congregation at that time moved to worship God under the forms of a Presbyterian Church, but that the transferred interest was in the pewholders as *cestui que trusts*, who held these pews as alienable and transmissible property, with full power to change the use at their will; and that, in fact, they exercised the right many years before 1782, by erecting themselves into another separate and independent religious community; and, in 1786, by unanimous vote of all persons legally or equitably interested in said land and meetinghouse, embraced the Congregational mode of government, in which they have ever since continued. The answer further submits that by and under the laws of the State, then and ever since existing, the estate could not be held according to the tenure and after the same manner as the Church of Scotland hold and enjoy the lands whereon meetinghouses are erected.

3. The decree contains no declarations or recital, but simply orders the bill to be dismissed.

It is submitted, therefore, that the record, neither on its face nor by any possible intendment, necessary or otherwise, shows that the constitutionality of the statute of 1805 was drawn in question or decided.

## II.

But if upon the preceding point there should be any possible doubt, yet it is clear beyond controversy that the decree of the State Court may be entirely supported upon various grounds within their exclusive cognizance; and, if so, it has been distinctly settled by this Court that it will not reverse the decision upon the ground that one of the points involved the constitutionality of a statute which was erroneously ruled, and thereupon send the case back to be decided the same way upon other grounds exclusively within the cognizance of the State Court.

Williams *vs.* Oliver, 12 Howard, 111, 124–5.
Erwin *vs.* Lowry, 7 Howard, 172, 179–80.
Collier *vs.* Stanbrough, 6 Howard, 14.

Mathews in Law of Wheaton 164

The pleadings show in this case the following grounds of defence set up by the answer, which are exclusively within the jurisdiction of the State Court, and the decision of either of which for Defendants would dispose of the case, viz.:—

That the deed and proof established no charitable use, so that an information by the Attorney-General cannot be supported.

That, treated as a trust, and even if an information would lie to enforce a trust not charitable, yet the trust was of a character which, by unanimous consent of trustees and *cestui que trusts*, might be changed, and that it was in fact so changed in 1786, and that the estate is now held in accordance with such change.

That, in any view, the Statute of Limitations set up in the answer was upon the proofs a complete bar to this or any suit to recover the disputed premises.

That by the local law the supposed limitation of the estate was void.

## III.

As it may be suggested that, inasmuch as the decree in this case does not recite the grounds on which it proceeds, resort may be had to the published report of the opinion of the Court to supply this deficiency. To which the Defendant in Error replies:—

1. That this Court does not supply the defects of pleadings or agreements of parties to raise a point intended to be relied on, by resort to the opinion delivered by the Court below, except under the practice of Louisiana, where the opinion forms part of the record.

Michigan Central R. R. *vs.* Michigan Southern R. R.,
19 Howard, 379.
Davis *vs.* Packard, 6 Peters, 47.
Williams *vs.* Norris, 12 Wheaton, 117.

2. That if from the fact that the decree is general in form, and contains no recitals or declarations, the Court will depart from the rule, and inspect the opinion of the State Court in this case, they

will find that the above inferences from the record are completely supported; that no question as to the constitutionality of the statute of 1805 was passed upon by the court; and, finally, that the case was disposed of upon the points above suggested, which were wholly and exclusively within its jurisdiction.

Att.-Gen. *vs.* Proprietors of Federal Street Meetinghouse. 3 Gray, 1–64.

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## POINTS FOR DEFENDANTS ON THE MERITS.

I. The character of the Plaintiff's application, whether it be an Information to enforce a public charity at the relation of the parties named in it, or an Information joined with a Bill both to regulate a charity, and to redress an injury to the private interests of the relators is material.

*a.* The conveyance relied on as the foundation of the bill may create a perfectly valid trust, capable of being enforced when the proper parties shall be before the Court, and yet have no single feature of a public charity.

*b.* If in the result the conveyance shall be found to possess merely that character, and to create no charity, the Bill, if in form a mere Information, will not be retained to enforce a trust not charitable.

*c.* The distinction is also material on another ground, that if the proceedings be by Information and Bill, in which the relator claims under one construction a title or interest in the charity, and so frames his Bill, if he fails in his construction, the Bill is dismissed.

Att'y Genl. *vs.* Oglender, 1 Vesey, Jr. 246.

*d.* The authorities that show the present proceeding to be an Information merely, are,

1 Daniel's Chancery Pleading and Practice, 15, 17, 20, 240.
Story's Equity Pleading, 23, 100.
Welford, 114.
Atty. Gen. *vs.* Brown, 1 Swanston, 305, Note.
In re. Bedford Charity, 2 Swans. 520.
Douglas *vs.* Horsfall, 2 Sim. & Stuart, 184.
Parker *vs.* May and al, 5 Cushing, 337.
Story's Equity Pleading, Sections 17, 112, 114, 114 *a.*
Debates on the Dissenters's Chapel Bill, pp. 279, 372, 375.
Milligan *vs.* Mitchel, 1 Mylne & Craig, 433.
Daniel *vs.* Wood, 1 Pick. 102.
Gay *vs.* Baker, 17 Mass. 435.
Jackson *vs.* Rainseville, 5 Met. 127.

*e.* If this can be deemed both Bill and Information, and on just construction is framed upon the personal interest of the relators, it is submitted that they wholly fail to show that they have such interest or the title to hold and administer the alleged charity, and though, if there be such a charity as the relators claim, who shall hold or administer it is unimportant to Defendants, yet the legal result is that the Bill should be dismissed.

II. The deed, Little to Glen and others, 9th June, 1735, creates no charitable use, but is a conveyance flowing from a purchase by parties associated for religious worship for their private individual benefit, in which purchase their several rights and interests are defined, and in terms made alienable and transmissible as property, the legal title being to accomplish these purposes vested in Trustees, called "a Committee for managing their prudential concerns."

This proposition involves the character and construction of the deed, and an examination of the question, whether there are certain well established features of charitable uses, the absence of which in the instrument creating the supposed charity, and especially the

insertion of provisions in such instrument repugnant thereto, are decisive of its character,—and Defendants submit that to constitute a charity cognizable by Information in a Court of Equity, it must contain the following elements:—

1st. The property or fund devoted to the alleged charity must to some extent, at least, spring from gift or bounty, and not be founded on an equivalent or consideration resulting to the parties from whom it is derived.

Attorney General *vs.* Heelis, 2 Sim. and Stuart, 67, 77.
Attorney General *vs.* Hewer, 2 Vernon, 387.
Babb *vs.* Reed, 5 Rawle, 151.
Bac. Ab. Charitable Uses, C.
Hill on Trustees, 2 Am. Ed., 454.
Thomas *vs.* Ellmaker, Parsons Select Equity Cases, 93, 109.
Anon. ———, 3 Atkins, 276.

*a.* It is not contended that a gift or contribution to a charity in the benefits of which the donor may directly or indirectly share in common with the public would thereby lose its character of a charity. This would be to exclude the whole class of charities created *in presenti* by gift of parties in existence to the public of which they form part. It is sufficient if the object be public and general.

2d. To be the subject of an Information, the property or fund must be devoted to some legal, general, or public purpose, as distinguished from donations founded on benevolence towards particular parties.

Attorney General *vs.* Heelis, 2 S. and Stuart, 67, 76.
Ommaney *vs.* Butcher, Tur. and Russ, 260, 71.
Attorney General *vs.* Haberdasher's Co., 1 M. and R. 420.

*a.* Such donations are mere private charities, which a Court of Chancery does not enforce by Information.

3d. Uncertainty in the individual objects is perhaps a necessary characteristic of a technical charity arising from the contingent shifting application of the fund, embracing parties not known or in existence, and whose rights require protection.

Mr. Binney's Argument in Vidal *vs.* City of Philadelphia.

The general principle that gift or donation to a public use is of the essence of a charity, is faintly, if at all, denied by Plaintiffs.

The Plaintiffs' only position is, that the fact that the fund is derived from contribution, or that the donors reserved a pecuniary or other benefit to themselves, does not destroy the character of charity.

To this, Defendants reply,

That no case has been cited, and it is believed none can be found of contributions or other donations, in which the ultimate use of the property is not declared to be public, or for unknown objects thereafter to arise, and never for the donors, "their heirs and assigns."

That the Shaker case, 2d Dana, 178, cited by Plaintiffs, is the judgment of two members of a court, the third delivering a dissenting opinion.

But even in this case, the property was held to be given to the society, under whose rules the donor was entitled to a support from his labors and the fund so long as he remained a member, but upon his death or withdrawal, *it went to indefinite objects.*

If, then, it shall have been established that it is essential to the existence of a charitable use capable of being enforced by Information that it shall have proceeded from gift or bounty, be devoted to some legal, general, or public purpose, and that there must be uncertainty as to its individual objects, it remains to examine the history and construction of the deed of Little to Glen and others, on which this Information is founded, and Defendant submits:

III. That the conveyance in question is wholly wanting in the element of gift or bounty.

That it was a purchase by associated parties as alienable transmissible property for their own uses, and not for public or general use.

That the individual objects of that purchase were fixed and certain, viz, the parties who furnished the purchase money on condition or consideration, their heirs and assigns.

That the terms "congregation," and "Proprietors in said Meetinghouse" are used throughout as convertible terms.

1st. The purchase of the land and the construction of the Church was made by Little in trust, and from the funds and resources, and on the credit of the Congregation belonging to the Presbyterian Meetinghouse in Long Lane.

*a.* The Deed, Little to Glen and others, 9th June, 1735, refers to, and thus incorporates the Award of Sheafe and others, of the 9th April preceding.

Record, p. 64.

*b.* By that award it is shown that the subject of arbitration was "the claims and demands which the said John Little had against ye *Congregation*, belonging to the Presbyterian Meeting House in Long Lane, in Boston aforesaid, with respect to *his attendance upon and looking after the building of ye said Meeting House*, and all his accounts of charges and disbursements about the same, *and the land* whereon it stands, as also touching and concerniug the said Little's purchase of the said land of Henry Dearing, Esq."

Record, p. 50.

Also "the outstanding debts *due to said Congregation*, amounting as by account appears, to the sum fifty four pounds five shillings," which Little seems to have held as security, and which he is directed by the award to make over to Glen and others, the Committee chosen and appointed by said Cengregation for managing the prudential affairs thereof.

Record, p. 52.

The award is decisive that the Congregation and not their Committee, furnished the funds.

*c.* The award directs Glen and others, who, as has been shown are in a subsequent part of it declared to be a Committee of the Congregation to pay Little one hundred and forty pounds five-pence in full of all his claims and demands against the Congregation.

Record, p. 51.

*d.* It determines Little's right and interest in the Meetinghouse to be "the pew and seat therein now in his possession, which is to remain good to him forever in the same manner as the rest of the proprietors in said Meetinghouse do hold and enjoy their respective rights and interests therein."

Record, p. 52.

*e.* Thus the "Congregation" for whom Little purchased the land and built the house—the subject of arbitration—are "the rest of the Proprietors in said Meetinghouse," who held the pews.

2nd. The fact that the land was purchased, and the Meetinghouse built, by the Congregation from their own resources being shown, and that it did not originate in gift or bounty, it remains to find if it was by them given and devoted to a general public use, or was held for, and by them respectively, as their own property, alienable and transmissible like other property, and this is to be determined by the award and the deed coupled with the contemporaneous construction of the latter by the conduct of the parties to it.

*a.* It will be conceded, we suppose, that a design on the part of a Congregation using and enjoying in severalty pews in a house of worship erected at their expense, to bestow such house and pews to public and general use, by conveying it to trustees, not for themselves, but to support a particular form of worship, would

require very clear terms in a conveyance, and that, too, in a case where no action of the proprietors is shown, but the whole proceeds upon an award of third parties.

*b.* Let us see, then, from the terms of the deeds, if it was designed to convey the estate for the use of the particular Congregation who had purchased and paid for it, or to the public for the support of a particular creed or form of worship.

1st. The award directs a conveyance to "the said Congregation," and not to trustees, or to any congregation who may hold particular tenets; and by congregation it has been shown is meant proprietors of pews.

Record, p. 51.

*a.* But the whole title was not to pass. There is to be reserved to Little, who held that title, the pew and seat now in his possession, which is *to remain good to him forever* in the same manner as the rest of the *proprietors in the said Meeting House do hold and enjoy their respective rights and interests therein.*

Record, p. 52.

*b.* This establishes that the House was divided into pews; that the pew holders had several rights and interests therein, and that those rights were to "remain good to them forever."

2d. The deed made two months afterwards to Trustees, (and not to the Congregation as directed by the award,) places the question of proprietorship beyond controversy.

*a.* It recites that the four Trustees who receive the conveyance are acting "*for themselves,*" and as a Committee appointed by the rest of the Congregation *for managing the prudential affairs thereof.*

Record, p. 64.

Why for themselves, and why the prudential affairs of the Congregation, if they were to take in trust for a public charity?

*b.* The reservation to Little is clearer than in the award, viz, reserving to the said John Little, *his heirs and assigns forever*, the right and interest which the said John Little hath in said Meetinghouse and land, to wit, the pew and seat therein now in his possession, which is to remain good to him, *his heirs and assigns forever*, in the same manner as *the rest of the proprietors in said Meetinghouse do hold and enjoy their respective rights and interests therein.*

Record, p. 65.

Thus the proprietors were to have the same title that Little had by his reservation.

This settles the character of the interest both of Little and the rest of the pewholders, viz., that it was property capable of sale, or alienation, and of transmission. Indeed, the use of the words "Proprietors of said Meetinghouse," throughout the conveyance, leads forcibly to the same result.

*c.* The Habendum is "to and for the only proper use, benefit, and behoof of the said Congregation ( ) forever," and *not for use of any present or future congregation who might hold any particular tenets.*

3d. The acts of persons, proprietors of pews in said Meetinghouse, contemporaneously with the deed of Little to Glen, and their representatives, show conclusively that the pews were treated as subject to alienation and devise, and thus, if it were otherwise doubtful, show the true construction of that deed.

*a.* Devise by John Quigg, March, 1754, "my pew in the Meetinghouse, Long Lane, whereof the Rev. John Moorehead is pastor."

Record, p. 122.

The Church Records show Quigg's child to have been baptised in 1731, also 1736.

*b.* Robert Wilson, Inventory, October, 1759, "one pew in the Rev. Mr. Morehead's, £7 13s. 4d."

Record, p. 122.

Robert Wilson's child was baptized, as shown by Church Records, in 1731. Also 1737.

*c.* Sam. Sloan's Inventory, 1767, "Two pews in Rev. Mr. Moorehead's Meetinghouse, £15 14s. 8d."

Record, p. 121.

Sam. Sloan's child was baptized, as shown by Church Records, in 1730. Also 1736.

*d.* Rev. John Moorehead's Inventory, January 1774, "A pew in the Presbyterian Meetinghouse, Boston, £7."

Rev. J. Moorehead was Pastor in 1735, date of Little's deed.

Record, p. 121.

*e.* The vote of 1786, changing the form of worship, shows that proprietorship was never lost sight of.

Record, p. 107.

4th. The deed also contains in parenthesis in the Habendum this clause, after the words "for the only proper use, benefit, and behoof of said Congregation, (according to the tenures, and after the same manner as the Church of Scotland hold and enjoy the lands whereon the Meetinghouses are erected) forever."

Record, p. 65.

And the question is what is the construction of this clause itself, and what influence has it on the construction of the whole conveyance.

*a.* It must be assumed that any construction that is to be given to it must be consistent with the clearly expressed intention that the proprietors of pews shall hold their property therein, to "them, and their heirs, and assigns forever."

*b.* In discussing this question Defendant assumes it to have been shown that this property was purchased by these associates for their own use and not for the use of the public, that the whole

equitable title was, and was intended to be vested exclusively in themselves, and was designed to be alienable and transmissible as property, in fine that there was no dedication of it to a public charity.

*c.* If under these circumstances in a trust deed distinctly declaring these purposes and conveying the property to trustees to effect this object, after declaring that the property is to be held for "their only proper use," the words are added "according to the tenures and after the same manner as the Church of Scotland hold and enjoy the lands whereon the meetinghouses are erected" what is the effect of the clause?

*d.* One thing is clear, that this will not make it a charity.

*e.* It is possible as between the trustees and *cestuis que* trust it may have been intended that the property should be enjoyed by *themselves and their assigns* for public worship after the forms and tenets of the Church of Scotland, although it is somewhat remarkable, that it should not have been expressed, but be that as it may, it is a matter to be settled between the trustees and the *cestui que* trusts and not a case for public interference.

*f.* It is possible that the intent was to indicate a perpetuity of trust from the known perpetuity in which lands which the meetinghouses of the Church of Scotland now built are held, but this creates no charity.

*g.* This is rendered probable by the fact that the tenure as expressed in the deed was complete without this clause and by the important fact that *in* 1735 *it is established that the Church of Scotland held no lands by any tenure or in any manner whatever.*

**V.** But it is suggested by plaintiffs that treated as a trust *inter partes* the conveyance is defective, and that it can only endure beyond the lives of the existing trustees, by deeming it a gift or dedication to a public charity.

*a.* Upon this principle, if it were true, every conveyance in which terms of inheritance were wanting must be construed to be a public charity.

*b.* The legal consequence of any defect by which the estate would only pass for the lives of the grantees or not pass at all would be possibly in the first case a resulting trust in favor of the congregation who furnished the consideration or the reversion would be in the grantor, and in the last the title remains in the grantor.

*c.* But though there are no words of inheritance yet the trustees will take an estate commensurate with the nature of the trust.

Parker *vs.* King. Suffolk, March Term, 1852.
Stevens *vs.* Palmer, 10 Met. 32.
Brooks *vs.* Jones, 11 Met. 191.
Gould *vs.* Lamb, 11 Met. 84.

*d.* Either the title or use became executed in the *cestuis que* use or if not it remained in the Trustees and ther heirs, and became vested in Defendants under their act of Incorporatton, June 15, 1805.

Earle *vs.* Wood, 8 Cushing, 432.

*e.* But be this as it may, any defect in our title will not convert a purchase into a charity.

**IV.** Defendant next submits that if there were stricken from the deed, the portions of it that in terms establish that the Meetinghouse was to be held for the then proprietors of pews, their heirs and assigns, and the habendum had been simply in trust, to be held "according to the tenures, and after the same manner as the Church of Scotland hold and enjoy the lands whereon the Meetinghouses are erected," the use would in this Commonwealth vest in the pew holders or Congregation, to be enjoyed by them

and their assigns, notwithstanding any change of tenets or creed; that this would be true if the conveyance had originated in gift or bounty,—*a multo fortiori* when the estate is a purchase by parties associated for religious worship.

*a.* This view turns as well upon the character of the language of the supposed habendum as upon the principles of public policy.

*b.* It is not designed to discuss the question whether consistently with the public good, gifts to erect or support Meetinghouses, may not be by apt words so limited that the enjoyment shall be confined to persons professing particular doctrines or forms of worship.

*c.* All that Defendants contend is that even in case of gift the terms of restriction must be clear and unambiguous.

*d.* It is admitted that the English doctrine, as established in the case of Lady Hewley's will, and several comparatively recent cases, is that where the terms of the deed of foundation are not clear and precise, but obscure, doubtful, and equivocal, the religious tenets of the founder, as well as of the first objects of the bounty are open to parol evidence, and when ascertained will govern and limit the uses of the charity.

*e.* But it is submitted that this doctrine, as applicable to the religious institutions of this country, ought not to have any standing; but looking at the great diversity of religious opinion, and the changes constantly occurring therein, nothing but the clearest and most unambiguous terms should be construed as intending to stereotype a particular creed or form of worship.

2 Story Eq., §1191, note.
Miller *vs.* Gable, 2 Denio, 492, 540, 549.
Baptist Church *vs.* Wetherel, 3 Paige R. 296.
Smith *vs.* Nelson, 18 Vermont, 511, 554.
Baker *vs.* Fales, 16 Mass. 488.
Stebbins and Jennings, 10 Pick., 172.

*f.* Looking then to the clause in this deed, it relates simply to tenure and manner of holding land by the Church of Scotland, and in terms has no reference to the creed or forms of that Church.

If intended to perpetuate a creed or form of worship, it is extraordinary that, simple and obvious as it must have been, not one word referring to it, even by inference, is found in the clause, or the whole deed. Any joint stock company might have used the same words.

**V.** The Statute of Limitations of this Commonwealth is a complete bar to this suit, whether it proceeds upon the ground of enforcing a technical charity, or a mere trust.

*a.* Rev. Stat., Chap. 119, Sect. 1, provides that no person shall commence an action for the recovery of any lands, or shall make any entry thereon unless within twenty years after the right to make such entry, or bring such action first accrued, or within twenty years after he, or those by, through, or under whom he claims, shall have been seized or possessed of the premises.

*b.* By the 12th Section, the Commonwealth is barred in the same manner.

*c.* The testimony shows that Defendants, a Corporation created by act of June 15, 1805, and under which the title of the pew-holders to the property purports by legislative act to be transferred in the form of a Corporation to them, were possessed of the premises under a claim of right from 1786, have built in 1809 a church upon the same, and claimed and held the property, as their own, up to the date of filing this bill, November 15th, 1852,—forty-seven years from the time of transfer to them as a Corporation.

Record, 116, 117, 118, 119.

*d.* Upon these facts, and this Statute to determine the question whether this suit is barred, it is necessary to ascertain and settle what has been the construction of our Statute as distinguished

from the early Statutes of Limitation in England; and Defendant submits:

1st. That both here and in England it has been uniformly settled that as between Trustee and *cestui que trust* the Statutes of Limitation are never a bar, and that this doctrine rests wholly on the ground that the possession of the Trustee is the possession of his *cestui que trust*, and not adverse, and thus the Statute has no application.

Farnum *vs.* Brooks, 9 Pick. 212, 242.
Hemenway *vs.* Gates, 5 Pick. 321.
Beckford *vs.* Wade, 17 Vesey, 88, 97.
Hovenden *vs.* Lord Annesly, 2 Sch. and Lef. 633.
Wedderburn *vs.* Wedderbern, 4 M. and Cr. 52.

2d. That it is equally well settled that as between the Trustee and *cestui que trust*, and a stranger who commits a disseisin of the trust estate, the Statute is applicable, and bars the remedies of both Trustee and *cestui que trust*.

Lewellen *vs.* Mackworth, 2 Eq. Ca. Ab. 579.
Hovenden *vs.* Lord Annesley, 2 Sch. and Lef. 629.
Pentland *vs.* Stokes, 2 Ball and Be. 75.
Cholmondeley *vs.* Clinton, 2 Jac. and Walker, 171–5.
Cholmondeley *vs.* Clinton, 2 Jac. and Walker, 191.

3d. That in England, until Stat. 3 and 4 Wm. 4th, Chap. 27, the Statute of Limitations was never held in a Court of Equity to apply *proprio vigore* to constructive trusts, but the Courts acted with more or less certainty and regularity upon such Statutes as furnishing analogies to govern their decisions.

Farnum *vs.* Brooks, 9 Pick. 212.
2 Sto. Eq. § 1520.
Commissioners, &c. *vs.* Wybrants, 2 Jones and Latouch, 182.

4th. That in this Commonwealth the Statute has been held

uniformly by its own force *to embrace all censtructive trusts,* and to be capable of being pleaded as such in bar.

Farnum *vs.* Brooks, 9 Pick. 212, 242.
Baker *vs.* Atlas Bank, 9 Metc. 182, 195.

If this is a correct exposition of the law and construction of our Statute, it remains to enquire what relation Defendants bear to this estate asserted to have been devoted to a charitable use.

1st. It is clear that they are not Trustees appointed, or professing to hold under the deed as construed by Plaintiff, but strangers, disseisors, who wholly disaffirm any trust, but claim, and have claimed for more than fifty years, the property as their own, and used it as such.

2d. If then they are Trustees at all, it is merely constructively, having that character forced upon them by a Court of Equity for purposes of remedy, and thus by the construction of our own Statute Plaintiffs are barred.

The only answer that can be made to this view would seem to be that in England Courts of Equity have held that trusts for charity, like implied or constructive trusts, have been held not to be barred by the Statute of Limitation, but that those Courts have applied to them merely their doctrine as to laches or stale claims.

To this we answer:

1st. That most of the English cases which state that charities are not within the Statute, are *dicta,* where the suits are against an acknowledged Trustee of a charity who has abused or perverted it.

2d. That to cure the defect arising from the doctrine of Courts of Equity in England, that constructive trusts are not within the Statute of Limitation, a new Statute, 3d and 4th, William 4th,

Chap. 27, has been passed, which is deemed and held to embrace constructive trusts in cases of charity.

2 Jones & Lat. 182.

3d. That our Statute having always embraced such trusts must be deemed to embrace those connected with charities as well as others.

**VI.** Not only is the Plaintiff's claim barred by the Statute of Limitations, but the pew holders in this case, as will be noticed by a Court of Equity, are the real parties and are bona fide purchasers without notice, and it is clearly settled that in regard to charitable estates, as well as others, this is a complete defence.

2d Equity Cases abridged, 195, pl. 16.

**VII.** In conclusion, Defendants submit that if the deed Little to Glen constituted any trust at all, it was a trust for the proprietors, their heirs and assigns.

That if the controverted clause declares (which is denied,) that the proprietors, their heirs and assigns were to enjoy the use restricted to a particular form of worship, this constitutes no gift to a public charity, but is matter between the Trustees and *cestui que trusts.*

That although the point is immaterial to Plaintiffs, as there is no charity yet, it was competent for the Trustees and *cestui que trusts,* by unanimous consent to change the trusts, and the evidence that they did so by vote of 1786, is complete, fortified as it is by over fifty years acquiescence.

That all events and under all the facts proved, the claim of Plaintiff is barred by Statute of Limitations.

S. BARTLETT, *For Defendant.*

An ACT *declaring and confirming the Incorporation* of the Proprietors of the Meeting-House in *Federal Street*, in the Town of *Boston*.

SECT. 1. *Be it enacted by the Senate and House of Representatives, in General Court assembled, and by the authority of the same,* That all persons who now are, or who may hereafter be the Proprietors of the pews in the Congregational meeting-house situate in *Federal Street*, in the town of *Boston*, be, and they are hereby declared and confirmed to be a Body Politic and Corporate, by the name of *The Proprietors of the Meeting-House in Federal Street in the Town of Boston;* and the said Corporation shall be, and hereby are deemed in law to be seized of the same meeting-house, with all the lands under, adjoining and belonging to the same, with the privileges and appurtenances, including the dwelling-house recently erected on the land appurtenant to said meeting-house, for the accommodation of the Minister of that Society, reserving however, to the several Proprietors of the pews in said meeting-house, their right to and interest in the said pews respectively.

SECT. 2. *Be it further enacted,* That the said Proprietors shall meet annually on the first Wednesday in *May* at the said meeting-house, or at such other place as their Committee may appoint, and at such other times as they may be duly notified for, in manner hereafter mentioned; and at said annual meeting, after having chosen a Moderator, shall choose a Clerk, Treasurer, and a Committee of seven persons, who shall all continue in office during the year, and until others are chosen in their room: *Provided however,* if, for any cause, the said annual meeting should not be holden, then the said officers may be chosen at any other meeting duly notified for that purpose.

SECT. 3. *Be it further enacted,* That the said Clerk shall be sworn to the faithful discharge of the duties of his office, and it shall be his duty to record all the votes, and all the proceedings of the said Proprietors, and of the said Committee, in separate

books, to be kept by him for that purpose; and the said Committee, or a major part of them, shall have full power to manage all the prudential affairs of the said Proprietors, in the same, and in as ample a manner as Parish Committees are authorized by law to manage the prudential affairs of parishes, and to notify any Proprietors' meeting, by posting up a notification at the door of said meeting-house, seven days at least before the time of holding the same.

SECT. 4. *Be it further enacted*, That the said Proprietors shall be entitled to all the privileges they have *heretofore in fact enjoyed*, and shall be bound by all the contracts, they have heretofore in fact entered into, as well with their present Minister as with others, and be subject to all the duties they have heretofore been subject to; and the said Proprietors are also empowered, from time to time, to make such further contracts, and raise such sums of money, annually, as they shall judge necessary, for the maintenance and support of the public worship of God, for the repairs or alterations of said meeting-house, and making any reasonable addition to the salary of their present or any future Minister, and for other parochial and incidental charges, including any sums that may be due for the completion of the ministerial house lately erected by the said Proprietors, on the lot adjoining said meeting-house, for the accommodation of their Minister; and all monies so raised by the said Proprietors, shall be paid annually, or by instalments, at such times and in such proportions as said Proprietors shall direct.

SECT. 5. *Be it further enacted*, That all monies raised by the said Proprietors for the purpose aforesaid, shall be assessed by the said Committee, or by the major part of them, upon the several Proprietors of the pews in said meeting-house, according to the relative value of said pews, regard being had to their situation and convenience; and the pews in said house shall be held liable to be taken and sold, for the payment of all assessments duly made as aforesaid, and for the discharge of all expenses incurred by such sale, in such manner, and on such contingencies

and conditions as have been, or may be agreed upon by the said proprietors, and which are, or shall be, summarily expressed and contained in the deed or conveyance of the pews; and the assessments made as aforesaid, shall be considered as a lien upon the pews in said meetinghouse: and a bill of each Proprietor's assessment, and of the time or times of payment, shall be left in his pew, of which fact, the oath of the Treasurer, or of the person by him employed for that purpose, shall be sufficient evidence.

SECT. 6. *Be it further enacted*, That if any of the officers chosen by said Proprietors shall die or resign, during the year for which they may be chosen, other persons may be elected in their room, for the remainder of the year, at any meeting of the Proprietors, to be notified by a major part of the Committee; but in all cases where there may be but one of the Committee in office, he shall have sufficient authority to call any meeting of the Proprietors.

SECT. 7. *Be it further enacted*, That Henry Hunter and Francis Wright, or either of them, may cause the first meeting of said Proprietors to be called, for the purpose of choosing the officers of said Proprietors for the year ensuing, and for any other purpose specified in a notification by them to be posted up at the door of said meetinghouse, giving notice of the time and place of said meeting, at which meeting the said Proprietors may agree on the mode of notifying future meetings.

[This act passed June 15, 1805.]